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SUPREME COURT [illegible]

OCTOBER [illegible]

TERM [illegible]

MICHAEL MAGIE, APPELLANT

vs.

JOHN [illegible]

TERM No. [illegible]

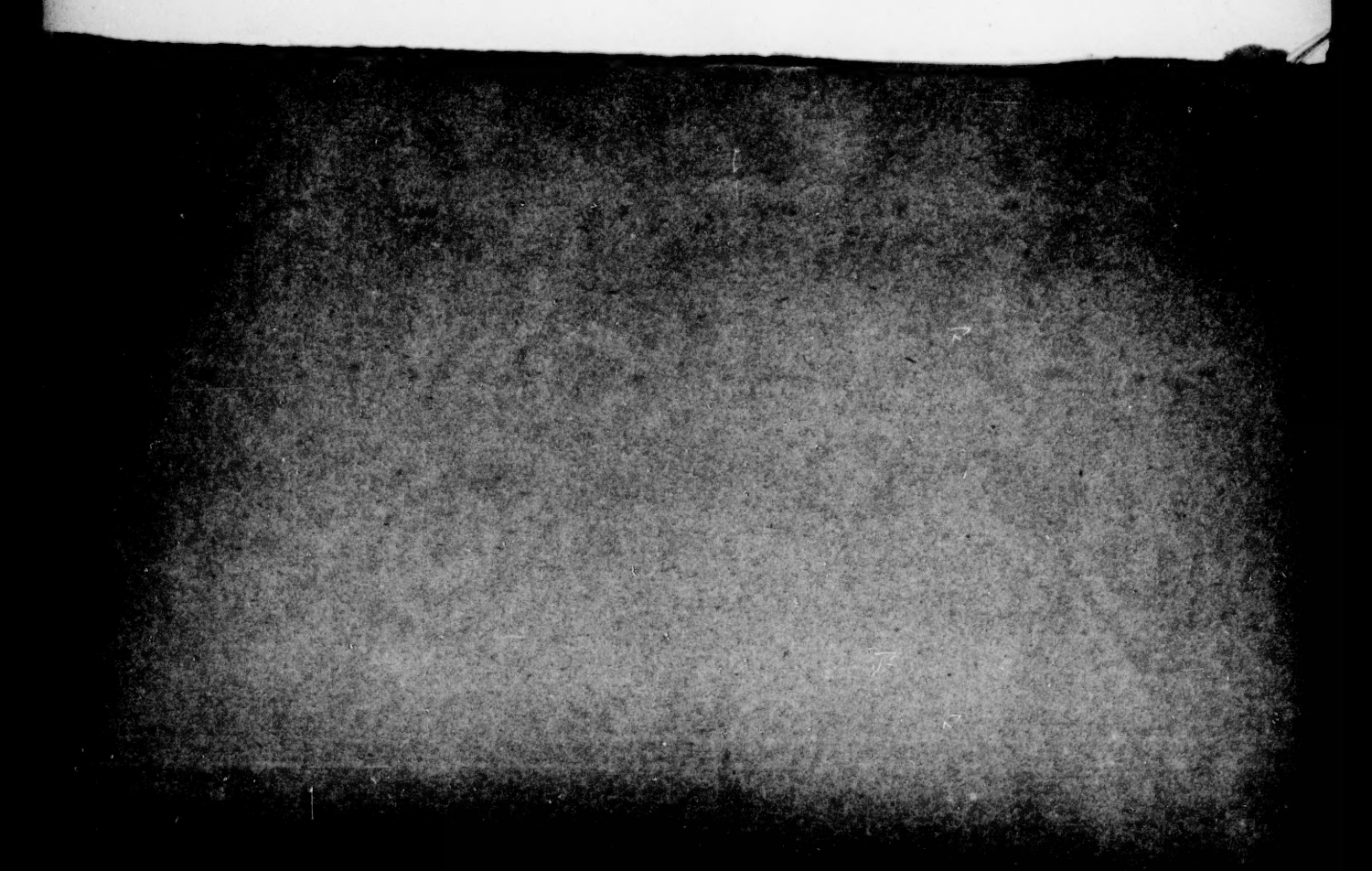
MICHAEL MAGIE, APPELLANT

vs.

JOHN H. LEHMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED [illegible]
THE NORTHERN DISTRICT OF NEW YORK.

FILED [illegible]



RECORD, CASE Nos. 13,994 & 13,995.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 323.

MICHAEL MAGIN, APPELLANT,

vs.

JOHN J. KARLE.

TERM No., 324.

MICHAEL MAGIN, APPELLANT,

vs.

JOHN H. LEHMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Enrolled decree (Karle suit)	1	1
Statement	1	1
Bill of complaint	3	1
Order for subpœna	9	4
Writ of subpœna	10	4
Marshal's return	11	5
Præcipe and order for appearance	12	5

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 28, 1892.

	Original.	Print.
Answer	14	6
Replication	19	8
Final decree	20	9
Enrolled decree (Lehman suit)	22	10
Statement	22	10
Bill of complaint	24	10
Order for subpœna	30	13
Writ of subpœna	31	13
Marshal's return	32	14
Præcipe and order for appearance	33	14
Answer	35	15
Replication	39	18
Final decree	40	18
Complainant's direct testimony	42	19
Offers of evidence	42	19
Testimony of Rufus F. Osgood	46	22
Complainant's testimony in rebuttal	55	26
Notice	55	27
Testimony of Raymond Stief	57	27
John H. Lehman	146	73
Lewis C. Muncie	151	76
George J. Weider	153	77
Otto Hahn	169	85
George J. Englert	214	108
Otto Schantz	295	150
Adelbert Cronise	411	208
Charles Gordon	421	213
Michael Magin	438	222
Frank E. Witherspoon	463	235
John F. Doran	474	241
John V. Englert	478	243
Henry Bartholomay	518	263
Certificate of notary	536	272
Complainant's exhibits	537	273
Gordon patent, No. 248,646, October 25, 1881	538	273
Magin circular	540	277
Sketch of defendants' beer cooler (Karle suit)	544	277
(Lehman suit)	545	277
Defendants' testimony	546	278
Stipulation as to testimony	547	278
Offers of evidence	550	280
Testimony of Albert Stief	551	280
John Meinhard	581	302
William Barr, Jr.	696	386
Adolph Cassebeer	743	421
Ernst Schaub	822	480
Certificate of notary	869	516
Defendants' exhibits	870	517
"A"—Final decree (Welker suit)	870	517
"B"—Final decree (McKay suit)	871	518
"C"—Decision (McKay and Welker suits)	872	518
"D"—Decision denying motion for rehearing (McKay and Welker suits)	875	520

	Original.	Print.
Defendants' Exhibit Meinhard testimony	877	521
Defendants' affidavits (complainant's exhibits)	890	529
Affidavit of Albert Stief	890	529
Adolph Cassebeer	893	531
Ernst J. Schaub	895	532
John Meinhard	897	534
William Barr, Jr.	902	537
Testimony as stipulated from Welker suit	904	538
Complainant's testimony	904	538
Testimony of Charles Gordon	904	538
Dominick Mura	924	554
Samuel Benswanger	933	560
Charles Bush	934	561
Michael Magin	942	568
Defendants' testimony	958	580
Testimony of Ernest J. Schaub	959	580
Anthony Kleinhanz	998	604
Joseph Rosch	1028	622
Martin Selbig	1042	632
John Boehm	1063	645
Ernest J. Schaub (recalled)	1080	655
Anthony Kleinhanz (recalled)	1084	658
Martin Selbig (recalled)	1088	660
Decision, Blatchford, J.	1091	662
Petition of appeal	1093	663
Bond on appeal	1097	665
Stipulation as to record on appeal	1101	667
Citation (original)	1103	668
Clerk's certificate	1106	669

1 *Statement.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
versus
JOHN J. KARLE. } In Equity. Docket No. 5617.

The complainant in the above-entitled cause filed his bill of complaint against the defendant herein on the 26 day of March, 1887, which bill is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued and served personally upon the defendant previous to the return day thereof; which subpœna and proof of service thereto are hereto annexed.

On the 27 day of April, 1887, the defendant duly appeared in said cause, by Josiah Sullivan, as his solicitor, and on the 6th day of June, 1887, filed his answer to the bill of complaint herein; which answer is hereto annexed.

On the 29 day of June, 1887, the complainant filed his replication to the said answer; which replication is hereto annexed.

Testimony was thereafter taken by and on behalf of the respective parties, and the said cause was brought to a hearing and argued by counsel upon pleadings and proofs before the Honorable Samuel Blatchford at a term of this court.

A decision was duly made by said court in favor of the defendant and filed herein the 28 day of October, 1889.

That thereafter and on the 2 day of January, 1890, the defendant's costs and disbursements were duly taxed and adjusted by the clerk of this court at $466.60.

2 On the 5 day of December, 1889, at a term of this court held at ——, present, the Honorable Samuel Blatchford, judge, a final decree was made and entered in the said cause; which final decree is hereto annexed.

3 *Bill of Complaint.*

Circuit Court of the United States in and for the Northern District of New York.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } In Equity.

To the honorable the judges of the circuit court of the United States in and for the northern district of New York:

Michael Magin, of the city of Rochester, county of Monroe, in the State of New York, and a citizen of said State, brings this bill against John J. Karle, of the city of Rochester aforesaid and a citizen of said State of New York.

And thereupon your orator complains and says that heretofore and before the twenty-fifth day of October, A. D. 1881, one Charles Gordon, of said city of Rochester, was the true, original, and first inventor of an improved apparatus for drawing and cooling beer, ale, &c., not known or used before and not in public use or on sale for more than two years prior to his application for a patent therefor.

And your orator further shows unto your honors that the said Charles Gordon, so being the inventor of said improvement
4 and a citizen of the United States, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing acts of Congress, and duly complied in all respects with the conditions and requirements of said acts of Congress, and that on October 25th, A. D. 1881, letters patent of the United States, numbered 248,646, signed, sealed, and executed in due form of law, for the said invention or discovery were issued to the said Charles Gordon, whereby there was secured to him, his heirs, executors, administrators, or assigns, for the term of seventeen years from the twenty-fifth day of October, 1881, the full and exclusive right of making, using, and vending the said invention or discovery throughout the United States and the territories thereof.

And your orator further shows unto your honors that on or about the ninth day of March, eighteen hundred and eighty-two, the said Charles Gordon, by an assignment in writing of that date, sold, assigned, and transferred unto your orator, the said Michael Magin, all his right, title, and interest in and to said letters patent and invention, which assignment was duly recorded in the Patent Office of the United States, as by said assignment or a duly authenticated copy thereof and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orator further shows that your orator has extensively applied the said improvement to practical use, and has been,
5 and but for the infringement hereinafter complained of would still be, in the undisturbed possession, use, and enjoyment of the exclusive privileges secured by the said letters patent and in receipt of the profits of the same.

And your orator further shows unto your honors, as he is informed and believes, that the said defendant hereinafter named, well knowing all the facts hereinbefore set forth, is now using an apparatus for drawing and cooling beer, ale, &c., substantially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make, to use, and vend which throughout the United States and the territories thereof is thus by law vested in your orator.

And so it is, may it please your honors, that the said defendant, as your orator is informed and believes, without the license of your orator, against his will, and in violation of his rights, has used, and intends to continue still to use, within the northern district of New York, the said invention, all of which is in violation of the said letters patent.

To the end, therefore, that the defendant may, if he can, show reason why your orator should not have the relief hereby prayed, and that he may make a full disclosure and discovery of all the matters aforesaid, and, upon his oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several allegations of this bill as though specially interrogated relative thereto;

6 And now, to the end that the defendant may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orator as above and be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction restraining the defendant from any further construction or sale or use, in any manner, of said patented improved apparatus or any part thereof, in violation of the rights of your orator as aforesaid, and that the infringing apparatus now in possession or use of the said defendant may be destroyed or delivered up to your orator for that purpose; and also that your honors, upon the rendering of the decree for an infringement as above prayed for, may proceed to assess or cause to be assessed, under your direction, in addition to the profits to be accounted for by the defendant as aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the willful and unjust infringement by said defendant, as herein set forth; and your orator prays also for a provisional or preliminary injunction and for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America directed to

7 the said John J. Karle and commanding him to appear and answer unto this bill of complaint and to abide and perform such order and decree in the premises as to the court shall seem meet and be required by the principles of equity and good conscience.

MICHAEL MAGIN.

GEO. B. SELDEN,
JOHN R. BENNETT,
Solicitors and Counsel for Complainant.

UNITED STATES OF AMERICA,
County of Monroe, State of N. Y., } ss:

Michael Magin, the complainant in the foregoing bill named, being duly sworn, deposes and says that so far as the statements therein contained are within his own knowledge they are true, and so far as they are derived from the information of others he verily believes them to be true, and he further says that he verily believes the said Charles Gordon in said bill named to be the original, true, and first inventor of the said improved apparatus for drawing

and cooling beer, ale, &c., which is described in the said letters patent granted to the said Charles Gordon, No. 248,646, dated Oct. 25, 1881, and mentioned in the foregoing bill, and your deponent verily believes that his title, as set forth in said bill, is true.

MICHAEL MAGIN.

Sworn to and subscribed this 21st day of March, A. D. 1887, before me—

Z. L. DAVIS,
[L. S.] *Notary Public.*

8 (Indorsed:) Bill in equity. Filed Mar. 26, 1887. W. S. Doolittle, clerk.

9 *Order.*

In the Circuit Court of the United States for the Northern District of New York.

MARCH 26, 1887.

Present: The Honorable William J. Wallace, judge.

MICHAEL MAGIN
vs. } 5617.
JOHN J. KARLE.

On filing bill of complaint in this cause and on motion of George B. Selden and John R. Bennett, complainant's solicitors—

Ordered that a writ of subpœna do issue out of and under the seal of this court pursuant to the prayer of said bill, and that this cause be docketed for said complainant.

10 *Writ of Subpœna.*

The President of the United States of America to John J. Karle, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States for the
[L. S.] northern district of New York, in the second circuit, on the first Monday in May, 1887, to answer to a bill of complaint exhibited against you in said court by Michael Magin, and to do further and receive whatever said court shall have considered in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Utica, in said northern district, the 26th day of March, eighteen hundred and eighty-seven.

W. S. DOOLITTLE, *Clerk.*

GEORGE B. SELDEN AND
JOHN R. BENNETT,
Solicitors for Complainant.

MEMORANDUM.—The defendant is to enter his appearance in the suit above mentioned in the clerk's office, at Utica, on or before the day at which the above subpœna is returnable; otherwise the bill may be taken *pro confesso*.

W. S. DOOLITTLE, *Clerk.*

11 UNITED STATES OF AMERICA, *Northern District of New York,* } *ss:*

I hereby certify that on the 28th day of March, 1887, at Rochester, in my district, I personally served the within writ of subpœna on the within-named defendant by showing the same to him, with the seal of the court thereon, and at the same time delivering to and leaving with him a true copy thereof.

WALTER H. BUNN,
U. S. Marshal.
J. M. BARDWELL, *Deputy.*

(Indorsed:) Equity subpœna. Filed Apr. 1, 1887. W. S. Doolittle, clerk.

12 *Appearance.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
against
JOHN J. KARLE. } No. 5617.

Notice of Retainer.

To W. S. Doolittle, Esq.:

Please take notice that I, having been retained by and appear herein for the defendant, John J. Karle, request a copy of the bill of complaint in this action.

Dated April 25th, 1887.

Yours, &c., JOSIAH SULLIVAN,
Attorney for Defendant; Office, 15 & 16 Elwood B'd'g; P. O. Address, Rochester, N. Y.

Filed Apr. 27, 1887.

W. S. DOOLITTLE, *Clerk.*

13 *Order.*

In the Circuit Court of the United States for the Northern District of New York.

APRIL 27, 1887.

Present: The Honorable William J. Wallace, judge.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } 5618.

On filing præcipe in this cause and on motion of Josiah Sullivan—Ordered that his appearance as solicitor for the defendant herein

be and the same is hereby, entered, and that this cause be now docketed for said defendant.

14 *Answer.*

Circuit Court of the United States, Northern District of New York.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } In Equity. No. 5617.

The answer of John J. Karle, the above-named defendant, to the bill of complaint exhibited in this court by Michael Magin, complainant.

To the honorable the judges of the circuit court of the United States within and for the northern district of New York:

The defendant herein, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be taken or had to the many errors, omissions, and deficiencies in said bill contained, for answer thereunto or unto so much and such parts thereof as he is advised are material and necessary to make answer unto, answering, says—

That he is informed and believes that letters patent of the
15 United States were granted unto Charles Gordon, dated the 25th day of October, A. D. 1881, numbered 248,646, for an alleged improvement in apparatus for drawing and cooling beer, but your defendant denies that the said Charles Gordon was the original and first inventor of the improvements described in said letters patent, or that the same was new and useful, and denies that any exclusive right was secured to him by the grant of said letters patent, as in said bill of complaint alleged.

And your defendant, not being informed save as by said bill of complaint alleged — whether or no by an assignment duly executed — the said Charles Gordon the entire right under said letters patent was transferred to the complainant, or whether said assignment was duly recorded in the United States Patent Office as required by law, neither admits or denies the same, but leaves the complainant to make such proof thereof as he may be advised is material and necessary.

And your defendant denies upon information and belief that complainant has extensively applied the said invention or improvement to practical use; denies that he has been, is, or would have been in the undisturbed possession of the same and denies that he is entitled to any exclusive possession, use, or enjoyment of the privileges alleged to be granted by said letters patent No. 248,646.

And your defeadant denies that he is now or has been using, making, or selling unto others the said patented improvements or any apparatus for drawing and cooling beer, containing said patented improvements or any material or substantial part thereof, as set forth and claimed in the letters patent granted unto the said Gordon, as in said bill of complaint alleged.

16 And your defendant denies that he has in any way infringed upon the letters patent granted unto the said Charles Gordon and alleged to be held by the complainant, and denies that he or his agents, servants, attorneys, or representatives have ever made, used, or sold unto others any apparatus which infringed or infringes upon the invention claimed by the said Charles Gordon and recited in the claims of his said patent, No. 248,646.

But your defendant alleges that prior to the alleged invention or discovery of said improvement by the said Charles Gordon, and more than two years before the filing by the said Charles Gordon of an application for the letters patent upon said invention for drawing and cooling beer, the same invention or substantial and material parts thereof had been known and used in the city of Rochester, county of Monroe, and State of New York, by the following-named persons, viz., John Meinhard, John Boehm, Ernst J. Schaub, John Rusch, Frederick Hodecker, Eugene Welker, Anthony Kleinhanz, Martin Selbig, Frank J. Schaffer, Godfried Schaffer, Felix Guenther, Charles Gilbert, Albert Steif, Adolph Cassabeer, William Barr, George Werner, James D. McKay, Joseph A. Wolfe, Michael Newhart, Camille Forrest, Fred. G. Marchand, Jacob Stuvenhaver, Joseph Lauer, William Bartholomay, Michael Quinn, and Joseph Rusch, all of the city of Rochester, in the county of Monroe and State of New York; also by Joseph Giering, of Harrisburg, Pa., in the city of Rochester, N. Y., and Louis Pebers and the firm of Bissel & Co., of St. Louis, in the county of St. Louis and State of Missouri, and used therein; and, moreover, your defendant alleges that the same invention was known to and used by others prior to the alleged invention or discovery thereof by the said Charles Gordon and more than two years before his application for letters patent therefor; but your defendant does not know the names of

17 such parties, and therefore prays leave to add them to this answer as soon as he can become acquainted therewith.

And this defendant, further answering, shows and alleges that the said Gordon letters patent *was* declared to be null and void by the United States circuit court in and for the northern district of New York, at a regular term thereof held at the court-house, in the village of Canandaigua, N. Y., on or about the 20th day of August, 1885, Hon. Samuel Blatchford, one of the judges of this court, presiding, in two certain suits, wherein Michael Magin, this plaintiff, was plaintiff and James D. McKay and Eugene Welker were defendants, and that in said actions it was adjudged and decreed that the alleged invention described and claimed in the said Gordon letters patent had been anticipated by an apparatus invented and put in use by John Meinhard in the city of Rochester, N. Y., in 1877, and continued in use for about four years, and that the said Gordon letters patent were therefore null and void; whereupon and shortly after said decree was made said plaintiff made a motion before the said Hon. Samuel Blatchford, justice, for a rehearing, which motion was denied on the merits and a decree to that effect embodying said decision, also denial of said motion, was duly and regularly entered in the said United States circuit court clerk's

office, in the city of Utica, on the 24th day of February, 1886, and a certified copy thereof with a notice of ent-y was served on plaintiff's counsel on the 5th day of March, 1886, from which decision and decree no appeal has been taken and the same remains in full force, and in view of the said decision of this court adjudging and decreeing said Gordon letters patent null and void upon the merits this action should not and cannot be maintained.

And, having thus fully answered the allegations of said bill of complaint, your defendant says that the said complainant
18 has no right to receive from him any damages or costs, as in said bill is prayed, and your defendant prays your honors that he may be hence dismissed with his proper costs and charges in this behalf most wrongfully sustained.

JOHN J. KARLE.

JOSIAH SULLIVAN,
Defendant's Solicitor, 15 and 16 Elwood Building, Rochester, N. Y.

CITY OF ROCHESTER,
County of Monroe, Northern Dist. of New York, } *ss:*

John J. Karle, being duly sworn, deposes and says that he has heard read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those he believes it to be true.

JOHN J. KARLE.

Subscribed and sworn to before me this 4th day of June, 1887.
[L. S.] M. H. McMATH,
Notary Public.

(Indorsed:) Answe-. Filed June 6, 1887. William S. Doolittle, clerk.

19 *Replication.*

Circuit Court of the United States, Northern District of New York.

MICAHEL MAGIN
vs.
KARLE. } In Equity.

The replication of the above-named complainant to the answer of Karle, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says that he will aver, maintain, and prove this bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant; without this, that any other matter or thing

whatsoever in the answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by *their* said bill *they have* already prayed.

JOHN R. BENNETT & GEO. B. SELDEN,
Solicitors for Complainant.

Indorsed: Replication. Filed June 29, 1887. W. S. Doolittle, clerk.

20 *Decree.*

At a term of the United States circuit court for the northern district of New York, held on the 5th day of December, 1889.

Present: Hon. Samuel Blatchford, circuit justice.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } In Equity. No. 5617. Decree.

This cause having been brought on to be heard upon the pleadings and proofs, and after hearing the parties by their respective solicitors, and the court having considered the matters submitted herein, finds the issues for the defendant.

Now, on motion of Josiah Sullivan, defendant's solicitor, it is hereby ordered, adjudged, and decreed that the bill of complaint of the complainant herein be, and the same is hereby, dismissed on the merits, and that the defendant, John J. Karle, recover of the complainant, Michael Magin, his costs, to be taxed by the clerk of this court, and have execution therefor.

SAM'L BLATCHFORD,
Circuit Justice.

Indorsed: Decree. Filed Dec. 5, 1889. W. S. Doolittle, clerk.

21 Whereupon the said pleadings, process, orders, and final decree, together with other papers in said cause, are duly annexed hereto, and this decree is duly enrolled, pursuant to the rules and practice of this court, this second day of January, A. D. 1890, at three o'clock in the afternoon.

W. S. DOOLITTLE, *Clerk.*

Indorsement on cover: Equity. No. 5617. United States circuit court, northern district of New York. Michael Magin *vs.* John J. Karle. Enrolled decree. Josiah Sullivan, def't's solicitor. Costs, $466.60. Filed Jan. 2, 1890, at 3 o'clock p. m. W. S. Doolittle, clerk.

22 *Statement.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
versus.
JOHN H. LEHMAN. } In Equity. Docket No. 5618.

The complainant in the above-entitled cause filed his bill of complaint against the defendant herein on the 26 day of March, 1887, which bill is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued and served personally upon the defendant previous to the return day thereof, which subpœna and proof of service thereto are hereto annexed.

On the 27 day of April, 1887, the defendant duly appeared in said cause by Josiah Sullivan as his solicitor, and on the 6th day of June, 1887, filed his answer to the bill of complaint herein, which answer is hereto annexed.

On the 29 day of June, 1887, the complainant filed his replication to the said answer, which replication is hereto annexed.

Testimony was thereafter taken by and on behalf of the respective parties, and the said cause was brought to a hearing and argued by counsel upon pleadings and proofs before the Honorable Samuel Blatchford at a term of this court.

A decision was duly made by said court in favor of the defendant and filed herein the 28 day of October, 1889.

That thereafter and on the 2 day of January, 1890, the defendant's costs and disbursement were duly taxed and adjusted by the clerk of this court at $466.60.

23 On the 5 day of December, 1889, at a term of this court, held at ——, present, the Honorable Samuel Blatchford, judge, a final decree was made and entered in the said cuase, which final decree is hereto annexed.

24 *Bill of Complaint.*

Circuit Court of the United States in and for the Northern District of New York.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } In Equity.

To the honorable the judges of the circuit court of the United States in and for the northern district of New York:

Michael Magin, of the city of Rochester, county of Monroe, in the State of New York, and a citizen of said State, brings this bill against John H. Lehman, of the city of Rochester aforesaid and a citizen of said State of New York.

And thereupon your orator complains and says that heretofore and before the twenty-fifth day of October, A. D. 1881, one Charles Gordon, of said city of Rochester, was the true, original, and first inventor of an "improved apparatus for drawing and cooling beer, ale, &c.," not known or used before and not in public use or on sale for more than two years prior to his application for a patent therefor.

And your orator further shows unto your honors that the said Charles Gordon, so being the inventor of said improvement
25 and a citizen of the United States, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing acts of Congress, and duly complied in all respects with the conditions and requirements of said acts of Congress, and that on October 25th, A. D. 1881, letters patent of the United States, numbered 248,646, signed, sealed, and executed in due form of law, for the said invention or discovery, were issued to the said Charles Gordon, whereby there was secured to him, his heirs, executors, administrators, or assigns, for the term of seventeen years from the twenty-fifth day of October, 1881, the full and exclusive right of making, using, and vending the said invention or discovery throughout the United States and the territories thereof.

And your orator further shows unto your honors that on or about the ninth day of March, eighteen hundred and eighty-two, the said Charles Gordon, by an assignment in writing of that date, sold, assigned, and transferred unto your orator, the said Michael Magin, all his right, title, and interest in and to said letters patent and invention, which assignment was duly recorded in the Patent Office of the United States, as by said assignment or a duly authenticated copy thereof and the certificate of such recording thereto affixed, ready in court to be produced, will fully and at large appear.

And your orator further shows that your orator has extensively applied the said improvement to practical use and has been
26 and, but for the infringement hereinafter complained of, would still be in the undisturbed possession, use, and enjoyment of the exclusive privileges secured by the said letters patent and in receipt of the profits of the same.

And your orator further shows unto your honors, as he is informed and believes, that the said defendant hereinafter named, well knowing all the facts hereinbefore set forth, is now using an apparatus for drawing and cooling beer, ale, &c., substantially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make, to use, and vend which throughout the United States and the territories thereof is thus by law vested in your orator.

And so it is, may it please your honors that the said defendant, as your orator is informed and believes, without the license of your orator, against his will, and in violation of his rights, has used and intends to continue still to use within the northern district of New York the said invention, all of which is in violation of the said letters patent—

To the end, therefore, that the defendant may, if he can, show reason why your orator should not have the relief hereby prayed, and that he may make a full disclosure and discovery of all the matters aforesaid and upon his oath and according to the best and utmost of his knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to the several allegations of this bill as though specially interrogated relative thereto—

27 And now, to the end that the defendant may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orator as above and be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction restraining the defendant from any further construction or sale or use in any manner of said patented improved apparatus or any part thereof in violation of the rights of your orator as aforesaid, and that the infringing apparatus now in possession or use of the said defendant may be destroyed or delivered up to your orator for that purpose, and also that your honors, upon the rendering of the decree for an infringement as above prayed for, may proceed to assess or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendant as aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment under the circumstances of the willful and unjust infringement by said defendant, as herein set forth; and your orator prays also for a provisional or preliminary injunction and for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to

28 the said John H. Lehman and commanding him to appear and answer unto this bill of complaint and to abide and perform such order and decree in the premises as to the court shall seem meet and be required by the principles of equity and good conscience.

MICHAEL MAGIN.

GEO. B. SELDEN,
JOHN R. BENNETT,
Solicitors and Counsel for Complainant.

UNITED STATES OF AMERICA,
County of Monroe, State of N. Y., } ss:

Michael Magin, the complainant in the foregoing bill named, being duly sworn, deposes and says that so far as the statements therein contained are within his own knowledge they are true and so far as they are derived from the information of others he verily believes them to be true; and he further says that he verily believes the said Charles Gordon in said bill named to be the original, true, and first inventor of the said improved apparatus for drawing

and cooling beer, ale, &c., which is described in the said letters patent granted to the said Charles Gordon, No. 248,646, dated Oct. 25, 1881, and mentioned in the foregoing bill, and your deponent verily believes that his title as set forth in said bill is true.

MICHAEL MAGIN.

Sworn to and subscribed this 21st day of March, A. D. 1887, before me—

Z. L. DAVIS,
Notary Public.

[L. S.]

29 (Indorsed:) Bill in equity. Filed Mar. 26, 1887. W. S. Doolittle, clerk.

30 *Order.*

In the Circuit Court of the United States for the Northern District of New York.

MARCH 26, 1887.

Present: The Honorable William J. Wallace, judge.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } 5618.

On filing bill of complaint in this cause and on motion of George B. Selden and John R. Bennett, complainant's solicitors—

Ordered that a writ of subpœna do issue out of and under the seal of this court pursuant to the prayer of said bill, and that this cause be docketed for said complainant.

31 *Writ of Subpœna.*

The President of the United States of America to John H. Lehman, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States for the [L. S.] northern district of New York, in the second circuit, on the first Monday in May, 1887, to answer to a bill of complaint exhibited against you in said court by Michael Magin, and to do further and receive whatever said court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Utica, in said northern district, the 26th day of March, eighteen hundred and eighty-seven.

W. S. DOOLITTLE, *Clerk.*

GEORGE B. SELDEN AND
JOHN R. BENNETT,
Solicitors for Complainant.

MEMORANDUM.—The defendant is to enter his appearance in the suit above mentioned in the clerk's office, at Utica, on or before the day at which the above subpœna is returnable; otherwise the bill may be taken *pro confesso*.

W. S. DOOLITTLE, *Clerk*.

32 UNITED STATES OF AMERICA, } *ss*:
Northern District of New York, }

I hereby certify that on the 28th day of March, 1887, at Rochester, in my district, I personally served the within writ of subpœna on the within-named defendant by showing the same to him with the seal of the court thereon, and at the same time delivering to and leaving with him a true copy thereof.

WALTER H. BUNN,
U. S. Marshal.
J. M. BARDWELL, *Deputy*.

(Indorsed:) Equity subpœna. Filed Apr. 1, 1887. W. S. Doolittle, clerk.

33 *Appearance*.

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
against
JOHN H. LEHMAN. } No. 5617.

Notice of retainer.

To W. S. Doolittle, Esq.:

Please take notice that I, having been retained by and appear herein for the defendant, John H. Lehman, request a copy of the bill of complaint in this action.

Dated April 25th, 1887.

Yours, &c.,

JOSIAH SULLIVAN,
Attorney for Defendant.

Office, 15 & 16 Elwood b'd'g; P. O. address, Rochester, N. Y.

Filed Apr. 27, 1887.

W. S. DOOLITTLE, *Clerk*.

34 *Order.*

In the Circuit Court of the United States for the Northern District of New York.

APRIL 27, 1887.

Present: The Honorable William J. Wallace, judge.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } 5617.

On filing præcipe in this cause and on motion of Josiah Sullivan—

Ordered that his appearance as solicitor for the defendant herein be, and the same is hereby, entered, and that this cause be now docketed for said defendant.

35 *Answer.*

Circuit Court of the United States, Northern District of New York.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } In Equity. No. 5618.

To the honorable the judges of the circuit court of the United States within and for the northern district of New York:

The answer of John H. Lehman, the above-named defendant, to the bill of complaint exhibited in this court by Michael Magin, complainant.

The defendant herein, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, omissions, and deficiencies in said bill contained, for answer thereunto, or unto so much or such parts thereof as he is advised are material and necessary to make answer unto, answering, says—

That he is informed and believes that letters patent of the United States were granted unto Charles Gordon, dated the 25th day of October, A. D. 1881, numbered 248,646, for an alleged improvement in apparatus for drawing and cooling beer; but your defendant denies that the said Charles Gordon was the original and first inventor of the improvements described in said letters patent, or that the same *was* new and useful, and denies that any exclusive right was secured to him by the grant of said letters patent, as in said bill of complaint alleged.

And your defendant, not being informed save as by said bill of complaint alleged whether or no by an assignment duly executed by the said Charles Gordon the entire right under said letters patent was transferred to the complainant, or whether said assignment was

duly recorded in the United States Patent Office, as required by law, neither admits -or denies the same, but leaves the complainant to make such proof thereof as he may be advised is material and necessary.

And your defendant denies upon information and belief that complainant has extensively applied the said invention or improvement to practical uses; denies that he has been, is, or would have been in the undisturbed possession of the same, and denies
36 that he is entitled to any exclusive possession, use, or enjoyment of the privileges alleged to be granted by said letters patent No. 248,646.

And your defendant denies that he is now or has been using, making, or selling unto others the said patented improvement or any apparatus for drawing and cooling beer containing said patented improvements or any material and substantial part thereof, as set forth and claimed in the letters patent granted unto the said Gordon, as in said bill of complaint alleged.

And your defendant denies that he has in any way infringed upon the letters patent granted unto the said Charles Gordon and alleged to be held by the complainant, and denies that he or his agents, servants, attorneys, or representatives have ever made, used, or sold unto others any apparatus which infringed or infringes upon the invention claimed by the said Charles Gordon and recited in the claims of his said patent, No. 248,646.

But your defendant alleges that prior to the alleged invention or discovery of said improvement by the said Charles Gordon and more than two years before the filing by the said Charles Gordon of an application for the letters patent upon said invention for drawing and cooling beer the same invention or substantial and material parts thereof had been known and used in the city of Rochester, county of Monroe and State of New York, by the following-named persons, viz., John Meinhard, John Boehm, Ernst J. Schaub, John Rusch, Frederich Hodecker, Eugene Welker, Anthony Kleinhanz, Martin Selbig, Frank J. Schaffer, Godfried Schaffer, Felix Guenther, Charles Gilbert, Albert Steif, Adolph Cassabeer, William Barr, George Werner, James D. McKay, Joseph A. Wolfe, Michael Newhart, Camille Forrest, Fred. G. Marchand, Jacob Stuvenhaver,
37 Joseph Lauer, William Bartholomay, Michael Quinn, and Joseph Rusch, all of the city of Rochester, in the county of Monroe and State of New York; also by Joseph Giering, of Harrisburg, Pa., in the city of Rochester, N. Y., and Louis Pebers and the firm of Bissel & Co., of St. Louis, in the county of St. Louis and State of Missouri, and used therein; and, moreover, your defendant alleges that the same invention was known to and used by others prior to the alleged invention or discovery thereof by the said Charles Gordon and more than two years before his application for letters patent therefor, but your defendant does not know the name of such parties, and therefore prays leave to add them to this answer as soon as he can become acquainted therewith.

And this defendant, further answering, shows and alleges that the said Gordon letters patent was declared to be null and void by the

United States circuit court in and for the northern district of New York at a regular term thereof held at the court-house, in the village of Canandaigua, N. Y., on or about the 20th day of August, 1885, Hon. Samuel Blatchford, one of the judges of this court, presiding, in two certain suits, wherein Michael Magin, this plaintiff, was plaintiff and James D. McKay and Eugene Welker were defendants, and that in said action it was adjudged and decreed that the alleged invention described and claimed in the said Gordon letters patent had been anticipated by an apparatus invented and put in use by John Meinhard in the city of Rochester, N. Y., in 1877, and continued in use for about four years, and that the said Gordon letters patent were therefore null and void; whereupon and shortly after said decree was made said plaintiff made a motion before the said Hon. Samuel Blatchford, justice, for a rehearing, which motion was denied on the merits, and a decree to that effect, embodying said decision, also denial of said motion, was duly and regularly
38 entered in the said United States circuit court clerk's office, in the city of Utica, on the 24th day of February, 1886, and a certified copy thereof, with notice of entry, was served on plaintiff's counsel on the 5th day of March, 1886, from which decision and decree no appeal has been taken and the same remains in full force; and in view of the said decision of this court adjudging and decreeing said Gordon letters patent null and void upon the merits this action should not and cannot be maintained.

And, having thus fully answered the allegations of said bill of complaint, your defendant says that the said complainant has no right to receive from him any damages or cost as in said bill is prayed, and your defendant prays your honors that he may be hence dismissed with his proper costs and charges in this behalf most wrongfully sustained.

JOHN H. LEHMAN.

JOSIAH SULLIVAN,
Defendant's Solicitor,
15 *and* 16 *Elwood Building, Rochester, N. Y.*

CITY OF ROCHESTER, }
County of Monroe, Northern Dist. of New York, } ss:

John H. Lehman, being duly sworn, deposes and says that he has heard read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those he believes it to be true.

JOHN H. LEHMAN.

Subscribed and sworn to before me this 3d day of June, 1887.
WILLIAM W. WEBB,
Notary Public.

(Indorsed:) Answer. Filed June 6, 1887. W. S. Doolittle, clerk.

39 *Replication.*

Circuit Court of the United States, Northern District of New York.

MICHAEL MAGIN
vs.
LEHMANN. } In Equity.

The replication of the above-named complainant to the answer of Lehmann, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove this bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant; without this, that any other matter or thing whatsoever in the answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by *their* said bill *they have* already prayed.

JOHN R. BENNETT &
GEO. B. SELDEN,
Solicitors for Complainant.

Indorsed: Replication. Filed June 29, 1887. W. S. Doolittle, clerk.

40 *Decree.*

At a term of the United States circuit court for the northern district of New York held on the 5th day of December, 1889.

Present: Hon. Samuel Blatchford, circuit justice.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } In Equity. No. 5617. Decree.

This cause having been brought on to be heard upon the pleadings and proofs, and after hearing the parties by their respective solicitors, and the court having considered the matters submitted herein finds the issues for the defendant—

Now, on motion of Josiah Sullivan, defendant's solicitor, it is hereby ordered, adjudged, and decreed that the bill of complaint of the complainant herein be, and the same is hereby, dismissed on the merits, and that the defendant, John H. Lehman, recover of the

complainant, Michael Magin, his costs, to be taxed by the clerk of this court, and have execution therefor.

SAM'L BLATCHFORD,
Circuit Justice.

Indorsed: Decree. Filed Dec. 5, 1889. W. S. Doolittle, clerk.

41 Whereupon the said pleadings, process, orders, and final decree, together with other papers in said cause, are duly annexed hereto, and this decree is duly enrolled, pursuant to the rules and practice of this court, this 2d day of January, A. D. 1890, at 3 o'clock and 30 minutes in the afternoon.

W. S. DOOLITTLE, *Clerk.*

Indorsement on cover:
Equity. No. 5618. United States circuit court, northern district of New York. Michael Magin *vs.* John H. Lehman. Enrolled decree. Josiah Sullivan, def't's solicitor. Costs, $466.60. Filed and entered Jan. 2, 1890, at 3 o'clock & 30 min. p. m. W. S. Doolittle, clerk.

42 *Complainant's Testimony.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN *vs.* JOHN J. KARLE. } In Equity. No. 5617.

MICHAEL MAGIN *vs.* JOHN H. LEHMAN. } In Equity. No. 5618.

Proofs for final hearing on the part of the complainant, taken under and pursuant to the 67th rule, as amended, before C. D. Kiehel, notary public and special examiner, by consent.

ROCHESTER, N. Y., *July 20th*, 1887.

Met pursuant to notice.
Present: Messrs. George B. Selden and John R. Bennett, counsel for complainant, and Josiah Sullivan, Esq., counsel for defendant.

Complainant's counsel offers in evidence printed copy of letter-patent of the United States granted Charles Gordon October 25, 1881, No. 248,646, for apparatus for cooling beer, and the same is marked Complainant's Exhibit Gordon Patent. It is stipulated that the printed copy of said patent may be used in place of the original.

43 Also copy of assignment, dated March 9, 1882, recorded in the United States Patent Office March 11, 1882, Liber K 27, page 331, of Transfers of Patents, from Charles Gordon to Michael Magin, the complainant herein, transferring and assigning to the said Magin the entire right, title, and interest to the said Gordon

invention and letter-patent of October 25, 1881, No. 248,646. It is stipulated that the foregoing copy of said assignment be used in place of the original.

Also a drawing of the apparatus for cooling and drawing beer used by John J. Karle, the defendant herein, at his saloon, in the city of Rochester, since October 25, 1881, and prior to the filing of the bill of complaint herein.

Drawing received in evidence and marked Complainant's Exhibit Defendant's Beer-Cooler.

Defendant's counsel admits that the foregoing drawing correctly represents the apparatus for cooling and drawing beer used by the defendant Karle at his saloon, in the city of Rochester, N. Y., since the 25th day of October, 1881.

It is further admitted by defendant's counsel that the apparatus for cooling and drawing beer used by the defendant Karle at his saloon, in the city of Rochester, since the 25th day of October, 1881, and prior to the filing of the bill of complaint herein was as follows, to wit:

The apparatus consisted of an upper ice box located in the saloon and a lower ice box or chamber located in the cellar, said boxes being connected by a galvanized iron pipe of about four inches in diameter, the upper ice box to be filled with ice and the lower ice box or chamber containing an ice rack or holder run-
44 ning across one end, to be filled with ice, and the kegs of beer to be placed in the remaining part of the chamber. The supply pipes, of which there are six, each of ⅞ inch diameter, for conveying the beer from the kegs to the faucet are connected up through the galvanized iron pipe which connects the upper and lower ice boxes and chambers, the supply or beer pipes running through the upper ice box, where they are connected to the faucets.

The galvanized iron pipe connecting the upper and lower chambers, through which the beer-supply pipes are run, acts both as a cold-air passage from the upper to the lower chamber and as a drip pipe for conducting the ice water from the upper ice box to the lower ice box or chamber when the apparatus is in use.

Ice is placed in the upper ice box and in the ice rack or holder in the lower ice box, and the beer-supply pipes running through the galvanized iron pipe connecting the upper and lower chambers are connected to the beer kegs in the lower chamber and the faucets in the upper chamber, and, air pressure being properly introduced into the kegs and the faucets on the upper ice box opened, the beer is forced up and out. The galvanized iron pipe conducting the upper and lower chambers, being somewhat larger in diameter than the beer-supply pipes, conducts the ice water formed by the melting of the ice from the upper to the lower chamber and around the beer-supply pipes, and at the same time acts as a cold-air passage from the upper to the lower chamber for the purpose of cooling the beer contained in and passing through the beer-supply pipes.

Also a drawing of the apparatus for cooling and drawing
45 beer used by John H. Lehman, the defendant herein, at his

saloon, in the city of Rochester, since October 25th, 1881, and prior to the filing of the bill of complaint herein.

Drawing received in evidence and marked "Complainant's Exhibit Defendants' Beer-Cooler."

Defendants' counsel admits that the foregoing drawing correctly represents the apparatus for cooling and drawing beer used by the defendant, John H. Lehman, at his saloon, in the city of Rochester, N. Y., since the 25th day of October, 1881, and prior to the filing of the bill of complaint herein.

It is further admitted by defendants' counsel that the apparatus for cooling and drawing beer used by the defendant Lehman at his saloon, in the city of Rochester, since the 25th day of October, 1881, and prior to the filing of the bill of complaint herein, was as follows, to wit:

The apparatus consisted of an upper ice box located in the saloon and a lower ice box or chamber located in the cellar, said boxes being connected by a galvanized iron pipe of about four inches in diameter, enclosed in a cast-iron pipe, there being substantially no space between the outer galvanized iron pipe and the cast-iron pipe.

The upper ice box to be filled with ice and the lower ice box or chamber containing an ice rack or chamber running across one end, to be filled with ice and the kegs of beer to be placed in the remaining part of the chamber. The supply pipes, of which there are six, for conveying the beer from the kegs to the faucet are conducted up through the galvanized iron pipe which connects the upper
46 and lower ice boxes or chambers, the supply or beer pipes running through the upper ice box, where they are connected with the faucets. The galvanized iron pipe connecting the upper and lower chambers, through which the beer-supply pipes are run, acts both as a cold-air passage from the upper to the lower chamber and as a drip pipe for conducting the ice water from the upper ice box to the lower ice box or chamber when the apparatus in in use.

Ice is placed in the upper ice box and in the ice rack or holder in the lower ice box or chamber, and the beer-supply pipes, running through the galvanized iron pipe connecting the upper and lower chambers, are connected to the beer kegs in the lower chamber and the faucets in the upper chamber, and air pressure being properly introduced into the kegs and the faucets on the upper ice box being opened the beer is forced up and out. The galvanized iron pipe connecting the upper and lower chambers, being somewhat larger in diameter than the beer-supply pipes, conducts the ice water formed by the melting of the ice from the upper to the lower chamber and around the beer-supply pipes and at the same time acts as a cold-air passage from the upper to the lower chamber for the purpose of cooling the beer contained in and passing through the beer-supply pipes.

Recess until 2.30 p. m.

2.30 P. M.

Parties appeared as before.

RUFUS F. OSGOOD, a witness called on the part of the complainant, being first duly sworn, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

47 A. My name is Rufus F. Osgood; age, fifty-five; residence, Clarkson, N. Y., and occupation solicitor of patents and expert in matters relating to patents.

Q. 2. How long have you been engaged in the business of soliciting patents and acting as expert in matters relating to patents and what experience, if any, have you had in testifying as an expert in patent cases pending in the United States courts?

A. Since 1856, during which period I have been frequently called upon to testify as an expert in patent cases, and more especially during the last nineteen years.

Q. 3. Have you read and do you understand letters patent of the United States No. 248,646, issued to Charles Gordon October 25th, 1881, for apparatus for cooling and drawing beer?

A. I have frequently read and carefully considered the Gordon patent referred to and believe I fully understand the invention of the said Gordon as described in his patent. I testified as an expert in the cases of Michael Magin *vs.* James D. McKay, and Michael Magin *vs.* Eugene Welker, pending in the United States court for the northern district of New York, for alleged infringement of the Gordon patent referred to.

Q. 4. Understanding, as you say, the invention described and claimed in the said Gordon patent of October 25th, 1881, do you find the said Gordon's invention so fully described and specified in his said patent of October 25th, 1881, as to enable any person skilled in the art to construct and operate his said invention from the specifications and drawings of the patent?

48 A. I do, the patent containing a very full description of the apparatus and the manner of operating the same.

Q. 5. Have you examined and do you understand the drawing admitted to be a correct representation of the apparatus used by the defendant Karle for cooling and drawing beer?

A. I have examined the drawing and understand the construction and arrangement of the apparatus which it represents, and my understanding of the construction and arrangement of the apparatus and the manner in which the same is operated is confirmed by the admission of defendants' counsel, which I have carefully read.

Q. 6. Have you read and do you understand the drawing admitted to be a correct representation of the apparatus used by the defendant Lehman for cooling and drawing beer?

A. I have examined the drawings and understand the construction and arrangement of the apparatus which it represents, and my understanding of the construction and arrangement of the apparatus and the manner in which it operates is confirmed by the admission of defendants' counsel, which I have carefully read.

Q. 7. Compare the apparatus for cooling and drawing beer used by the defendant Karle, as shown by the drawing Exhibit Karle Apparatus, and the admission of defendants' counsel with the invention shown and described in the Gordon patent of October 25th, 1881, No. 248,646, and especially claimed in the first and fourth claims thereof, and state whether or not you find in the said Karle's apparatus for cooling and drawing beer the invention described in the said Gordon patent and claimed in the first and fourth claims thereof, giving your reasons for any opinion you may express.

49

A. I have examined the apparatus for cooling and drawing beer used by the defendant Karle, as exhibited in the drawing Exhibit Karle Apparatus, and as set forth in the admission of defendants' counsel, and have compared the same with the Gordon invention, and in my opinion the said Karle apparatus contains the invention shown and described in the Gordon patent and covered by the first and fourth claims thereof.

The first claim of the Gordon patent covers the combination of, first, the upper ice box, D; second, supply pipe B; third, faucet C, and, fourth, cold-air passage H, the latter surrounding the beer-supply pipe. The object of this cold-air passage, as stated in the specification of the Gordon patent, is to allow the cold air to circulate around the supply pipe and reduce "the temperature of the beer in the supply pipe," and also to allow "the water produced by the melting of the ice in the ice box" to "flow downward through the air passage, assisting in the cooling operation." As I understand the first claim, it covers broadly the combination of the four parts named, so that any apparatus for cooling and drawing beer consisting of an upper ice box, a supply pipe, through which the beer passes, a faucet for the passage of the beer, and a cold-air passage surrounding the supply pipe, with space for the circulation of cold air and the escape of the drip, would infringe that claim.

I find, on examining the drawing of the Karle apparatus and reading the admission of defendants' counsel, that the Karle apparatus contains the same invention as that described in the Gordon patent and claimed in and by the first claim of that patent, consisting, as admitted by defendants' counsel of, first, an upper ice box, in which ice can be placed; second, a supply pipe through which beer passes from the keg; third, a faucet attached to the upper end of the supply pipe for the discharge of the beer, and, fourth, a cold-air passage surrounding the supply pipes below the upper ice box, and to allow the cold air to circulate around the supply pipe and to carry downward the drip produced by the melting of the ice in the upper ice box.

50

The defendant Karle uses six $\frac{3}{8}$-inch supply pipes, located in a four-inch cold-air passage. It is obvious that these six supply pipes, while located in a four-inch cold-air space, leave ample space for the circulation of the cold air and for the passage downward of the melting ice water.

The fact that six supply pipes are used instead of one makes no

difference as to the matter of infringement, as it is only a duplication.

For the reasons above stated I am of the opinion that the defendant Karle's apparatus contains the invention covered by the first claim of the Gordon patent.

The fourth claim in the Gordon patent covers the combination of, first, an upper ice box, D; second, supply pipe B; third, faucet C; fourth, lower chamber F, and, fifth, the cold-air passage H, communicating between the ice box and the lower chamber.

The combination is the same as the combination of the first claim, with the additional feature of the lower chamber F, where
51 the beer kegs are kept. The Karle apparatus shows this lower chamber, and the cold-air passage extends from the upper ice box to the lower chamber, surrounding the supply pipes, and so as to allow of a cold-air passage and the drip to pass down. In my opinion the Karle apparatus contains the combination of the fourth claim of the Gordon patent.

Q. 8. Compare the apparatus for cooling and drawing beer used by the defendant Lehman, as shown by the drawing, Exhibit Lehman Apparatus, and the admission of defendants' counsel with the invention shown and described in the Gordon patent of October 26, 1881, No. 248,646, and especially claimed in the first and fourth claims thereof, and state whether or not you find in the said Lehman apparatus for cooling and drawing beer the invention described in the said Gordon patent and claimed in his first and fourth claims thereof, giving your reasons for any opinion you may express.

A. I have examined the apparatus for cooling and drawing beer used by the defendant Lehman, as exhibited in the drawing, Exhibit Lehman Apparatus, and as set forth in the admission of defendant's counsel, and have compared the same with the Gordon invention, and in my opinion the said Lehman apparatus contains the invention shown and described in the Gordon patent and covered by the first and fourth claims thereof.

The first claim of the Gordon patent covers the combination of (1) the upper ice box D, (2) supply pipe B, (3) faucet C, and (4) the cold-air passage H, the latter surrounding the beer-supply pipe.

The object of this cold-air passage, as stated in the specifica-
52 tion of the Gordon patent, is to allow the cold air to circulate around the supply pipe and reduce "the temperature of the beer in the supply pipe," and also to allow "the water produced by the melting of the ice in the ice box" to "flow downward through the air passage, assisting in the cooling operation."

As I understand the first claim, it covers broadly the combination of the four parts named, so that any apparatus for cooling and drawing beer consisting of an upper ice box, a supply pipe through which the beer passes, a faucet for the passage of the beer, and a cold-air passage surrounding the supply pipe, with space for the circulation of cold air and the escape of the drip, would infringe that claim.

I find on examining the drawing of the Lehman apparatus and reading the admission of defendants' counsel that the Lehman ap-

paratus contains the same invention as that described in the Gordon patent and claimed in and by the first claim of that patent, consisting, as admitted by defendants' counsel, of (1) an upper ice box, in which ice can be placed; (2) a supply pipe through which the beer passes from the keg; (3) a faucet attached to the upper end of the supply pipe for the discharge of the beer, and (4) a cold-air passage surrounding the supply pipe below the upper ice box and to allow the cold air to circulate around the supply pipe and to carry downward the drip produced by the melting of the ice in the upper ice box.

The defendant Lehman uses six ⅜-inch supply pipes located in a four-inch cold-air passage. It is obvious that these six supply pipes, while located in the four-inch cold-air space, leave ample
53 space for the circulation of the cold air and for the passage downward of the melting ice water. The fact that six supply pipes are used instead of one makes no difference as to the matter of infringement, as it is only a duplication.

For the reasons above stated I am of the opinion that the defendant Lehman's apparatus contains the invention covered by the claim of the Gordon patent.

The fourth claim of the Gordon patent covers the combination of (1) an upper ice box D, (2) supply pipe B, (3) faucet C, (4) lower chamber F, and (5) the cold-air passage H communicating between the ice box and the lower chamber. The combination is the same as the combination of the first claim, with the additional feature of the lower chamber F, where the beer kegs are kept. The Lehman apparatus shows this lower chamber and the cold-air passage extends from the upper ice box to the lower chamber surrounding the supply pipes, so as to allow of a cold-air passage and the drip to pass down. In my opinion, the Lehman apparatus contains the combination of the fourth claim of the Gordon patent.

Q. 9. Have you with you and can you produce a model showing and illustrating the Gordon invention shown and described and claimed in the said Gordon patent of October 25, 1881, No. 248,646?

A. I have such a model and here produce it.

Said model is offered in evidence and marked "Complainant's Exhibit Model of the Gordon Beer Cooling and Drawing Apparatus," it being admitted that the same model was given in evidence
54 by the complainant herein in his suits against James D. McKay and Eugene Welker, brought in this court, No. 3771 and 3809 respectively, as a model of the Gordon invention.

Cross-examination waived.

RUFUS S. OSGOOD.

Read over, subscribed, and sworn to before me this 20th day of July, 1887.

C. D. KIEHEL,
Special Examiner and Notary Public.

Complainant rests.

STATE OF NEW YORK, } ss:
County of Monroe, }

I hereby certify that the foregoing is a just and true report of all proceedings had and testimony taken before me on behalf of the complainant herein; that the witness, Rufus S. Osgood, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that his testimony was taken before me by a stenographer in my presence and thereafter read, subscribed, and sworn to by him before me and in the presence of counsel; that I am not directly or indirectly interested in the matter at issue herein and not related to any of the parties.

Rochester, N. Y., July 20, 1887.

[L. S.] C. D. KIEHEL,
Notary Public.

(Indorsed:) Complainant's testimony. Filed Dec. 9, 1889. W. S. Doolittle, clerk.

55 U. S. Circuit Court, Northern District of New York. In Equity.

MAGIN *vs.* KARLE. } Nos. 5617 & 5618.
MAGIN *vs.* LEHMANN. }

Please take notice that the complainant in the above causes will proceed to take testimony therein under the 67th rule in equity, as amended, before C. D. Kiebel, notary public & special ex'r, on Saturday, Dec. 3, 1887, at 10 o'clock a. m., at Reynolds' arcade, Rochester, N. Y.

Dated Rochester, N. Y., Dec. 2, 1887.

JOHN R. BENNETT &
GEO. B. SELDEN,
Comp't's Solicitors.

To Josiah Sullivan, Esq., defendants' solicitor.

Indorsed: Notice of taking testimony.

56 *Complainant's Testimony in Rebuttal.*

United States — Court, Northern District of New York.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } In Equity. No. 5617.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } In Equity. No. 5618.

Pursuant to notice, which is hereto annexed, proofs for the final hearing on the part of the complainant in rebuttal in the above-entitled actions were taken under and pursuant to the 67th rule, as amended, before C. D. Kiehel, notary public and special examiner, on the 3d day of December, 1887, at 10 o'clock a. m., at No. 54 Reynolds' arcade, Rochester, N. Y.

Present: John R. Bennett, Esq., and George B. Selden, solicitors for complainant; Josiah Sullivan, Esq., solicitor for the defendants.

57 STIEF, RAYMOND, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Raymond Stief. I live — 32 Galusha street; occupation, shoemaker; twenty-seven years old.

Q. 2. How long have you been shoemaking?

A. Pretty near seven years.

Q. 3. How were you employed before that time?

A. By Mr. Meinhard.

Q. 4. Give Mr. Meinhard's full name and what his business was and where he was located.

A. He kept summer garden or saloon on North St. Paul street; John Meinhard.

Q. 5. When did you first work for Mr. Meinhard and in what capacity?

A. I worked for Mr. Meinhard in the spring of 1877 as a waiter boy.

Q. 6. How long did you work for Mr. Meinhard as waiter boy?

A. Two years or so.

Q. 7. While you were working for Mr. Meinhard as waiter boy precisely what were your duties?

A. Carry around beer and go down cellar and fetch up beer.

Q. 8. Then you had to go down cellar and fetch up the beer, did you?

A. Yes, sir.

58 Q. 9. In what form did you bring the beer out of the cellar?

A. Rolled it out of a hallway and pulled it up with a derrick.

Q. 10. Then you went into the cellar for the kegs of beer that were used upstairs?

A. Yes, sir.

Q. 11. Where did you take the kegs from the cellar?

A. Out of the ice box.

Q. 12. Where did you take them to?

A. Upstairs, in the large hall.

Q. 13. By the large hall do you mean the summer garden?

A. No, sir; there is a large hall there.

Q. 14. During the two years that you were employed by Meinhard as waiter boy did you work there continuously?

A. When there was anything going on Sundays, and picnics, and such things as that.

Q. 15. Were you ever employed by Meinhard other than a waiter boy?

A. Yes, sir.

Q. 16. When was that and for how long and in what capacity were you employed?

A. That was early in the spring. I was hired there steady, tending bar and working around the place.

Q. 17. The spring of what year was that?

A. That was the spring of 1879.

59 Q. 18. And after that you worked there continuously, did you?

A. Yes, sir.

Q. 19. Until what time?

A. Until the fall.

Q. 20. Where did you tend bar during this time?

A. Right in front, in the bar-room.

Q. 21. In what was known as the saloon proper?

A. Yes, sir.

Q. 22. Was the saloon proper kept open Sundays?

A. Until towards evening.

Q. 23. And what then was done?

A. It was closed up when the concert started in the large hall.

Q. 24. Was that the case every Sunday during the time you worked there steadily in 1879?

A. Yes, sir.

Q. 25. Did you know Mr. Gilbert, Mr. Meinhard's partner?

A. I did.

Q. 26. State whether or not Mr. Gilbert and Mr. Meinhard were in and about the saloon attending to the business.

A. Yes, sir; they were most all the time. Mr. Gilbert was there all day long, and used to be around the place.

Q. 27. Were Mr. Gilbert and Mr. Meinhard around the saloon on Sundays?

A. Yes, sir.

60 Q. 28. During the time you worked at Meinhard's did he have a beer cooling and drawing apparatus in use?

A. Yes, sir.

Q. 29. State whether or not during the time you were employed

there as bartender in 1879 you used this beer drawing and cooling apparatus.

A. I don't understand you.

Q. 30. While you were tending bar at Meinhard's in 1879 did you draw beer through this beer drawing and cooling apparatus?

A. Yes, sir.

Q. 31. Where was this beer drawing and cooling apparatus located?

A. Right up against the wall, back of the bar.

Q. 32. Where was the beer drawn from?

A. It was drawn from the ice box down cellar.

Q. 33. Describe the upper part of this beer drawing and cooling apparatus.

A. There was three or four faucets out of the front end of the box, and the cover of the box laid right on top of it, and there was pipe run that was coiled on the inside of the box, and went down out of the box through the cellar floor and into the large ice box down below.

Q. 34. In what part of the box in the saloon were the coils located?

A. Right in the bottom of the box.

Q. 35. And was there a coil for each faucet?

A. Yes, sir.

61 Q. 36. What, if anything, was placed in the upper box?

A. Ice.

Q. 37. State what the ice was put in for and how you fixed it in the box.

A. Used to go down cellar in the large ice box and break off a chunk and put it in there; that was to keep the beer cool that laid in the coils.

Q. 38. How did they get the melted ice water out of the upper ice box?

A. Dipped it out.

Q. 39. Was that a part of your duties?

A. Yes, sir.

Q. 40. Was there any other way of getting the melted ice water out of the box?

A. Not at all.

Q. 41. How often during the day did you dip the water out of the upper ice box?

A. Two or three times, according to the way the weather was; how fast it melted.

Q. 42. Who instructed you how to get the water out of the upper ice box when you first commenced tending bar?

A. Mr. Guenther, who worked there, told me how to take it out.

Q. 43. Did Mr. Meinhard know how the water was taken out?

A. Yes, sir.

Q. 44. Did he ever call your attention to the water in the ice box?

A. Yes, sir.

Q. 45. State what he said to you.

62 A. He told me to go down cellar and fetch up another chunck of ice and, if necessary, to dip it out every time we put in ice.

Q. 46. Was there any way in which the water could flow off through drip pipes or other means?

A. No, sir.

Q. 47. You say these beer-supply pipes went through the floor and down into the cellar?

A. Yes, sir.

Q. 48. Into the lower ice box?

A. Yes, sir.

Q. Describe, as near as you can, the course of the pipes from the upper ice box to the lower ice box.

A. They went down through the floor, and this ice box down cellar was in the hallway, and from the end of the ice box there was a wine-room, and this was slabbed up, and the pipes go on the outside of the wine-room down and turned off into the slabs and into the corners of the large ice box, in the east corner of the ice box.

Q. 50. Where was the ice box located in the cellar?

A. In the southwest corner.

Q. 51. Where was this wine cellar which you speak of?

A. On the south side of the cellar, running from the ice box up to the other end.

Q. 52. Butted up against the ice box at one end, did it?

A. Yes, sir.

Q. 53. How do you say that was divided off from the rest of the cellar?

63 A. Slabs, pickets up and down from the ceiling to the floor.

Q. 54. Am I correct in understanding you that, as the beer-supply pipes came through the floor, they were on the outside of the wine cellar?

A. Yes, sir.

Q. 55. State whether or not the beer-supply pipes were visible.

A. Yes, sir.

Q. 56. For how long a distance were they exposed before going into the wine cellar?

A. A foot and a half or two feet.

Q. 57. And after entering the wine cellar where did these beer-supply pipes go?

A. They run over into the ice box.

Q. 58. And how far was it from where the beer-supply pipes entered the wine cellar to where they entered the lower ice box.

A. Probably three feet.

Q. 59. Did these beer-supply pipes have any covering on them?

A. No, sir.

Q. 60. As they came through the floor and entered the wine cellar could you or not see the bare pipe?

A. Yes, sir.

Q. 61. State whether or not there was any rubber pipe or hose

surrounding these beer-supply pipes at any time while you were there.

A. No, sir; they were perfectly bare.

Q. 62. Were these pipes boxed in?

A. No, sir.

64 Q. 63. Perfectly bare, were they?

A. Yes, sir; perfectly bare.

Q. 64. State whether or not there was any covering upon or around these beer-supply pipes from their leaving the upper ice box until their entrance into the lower ice box.

A. No, sir; there wasn't any.

Q. 65. Was there any way in which the water from the upper ice box could get down into the lower ice box?

A. No, sir.

Q. 66. Was there any air passage from the upper ice box to the lower ice box?

A. No, sir.

Q. 67. Was there any communication whatever between the upper and lower ice box?

A. No, sir.

Q. 68. State what direction the beer-supply pipes took as they entered the lower ice box.

A. After they got in a corner they were attached by a rubber hose and this rubber hose run down to the barrels and fastened into the barrels.

Q. 69. Was each beer-supply pipe coupled to a rubber pipe?

A. Yes, sir.

Q. 70. And the opposite end of that rubber pipe was then in turn coupled to the beer faucets?

A. Yes, sir.

Q. 71. Other than these rubber connections which con-

65 nected the beer-supply pipes directly to the faucets, were there any rubber pipes used about those beer-supply pipes?

A. No, sir.

Q. 72. Describe this lower ice box.

A. The lower ice box ran from the ceiling to the floor, and there was a place there to attach three half barrels of beer, and the beer was tapped on the east side of the ice box, and then there was shelving on the east, south, and west sides of the ice box, and the floor of the ice box was where we used to stand the beer in when it was fetched by the peddler.

Q. 73. Was it to this ice box that you used to go to get the kegs of beer when you were a waiter boy?

A. Yes, sir.

Q. 74. At that time did they draw the beer from kegs in the lower ice box up into the saloon?

A. Yes, sir.

Q. 75. Was it a part of your duties during the two years that you were employed as waiter boy to go into the lower ice box and get these kegs?

A. Yes, sir.

Q. 76. During those two years did you or not tap beer that was drawn up into the saloon?

A. No, sir.

Q. 77. Did you do that work when you became barkeeper?

A. Yes, sir.

Q. 78. How often during the day would you go into the lower ice box to tap the kegs and make the connections with the beer-supply pipes?

66 A. Sometimes they wouldn't tap only once or twice a day, and Sundays probably they would tap two or three times.

Q. 79. How far from the floor were these shelves on which you placed the ice in the lower ice box?

A. They might have been five feet or more.

Q. 80. Did the beer-supply pipes as they entered the ice box come above or below the shelf on which the ice was placed?

A. Above.

Q. 81. Describe in your own way how the beer-supply pipes go into the lower ice box.

A. After the pipes go down they go into the corner and run right on top of this shelving, and the rubber hose run over the top of the shelving and left the pipes in the corner.

Q. 82. What provision, if any, was made for taking care of the ice water from the ice in the lower ice box?

A. There wasn't any that I know of. We used to have to clean the box out quite often; probably once or twice a week.

Q. 83. Every time you tappped a keg of beer in the lower cellar and made the connection did you have to handle these pipes?

A. Yes, sir.

Q. 84. How many months during the year 1879 did you work for Meinhard?

A. Eight or nine months.

Q. 85. And during all this time you were a steady bartender, tending bar in a saloon?

67 A. Yes, sir; every day.

Q. 86. State whether or not all the beer that was used in the upper saloon during the time you worked there continuously in 1879 was drawn through this beer drawing and cooling apparatus.

A. Not all of it. With the exception when there was a circus used to be on those grounds we didn't have faucets enough to draw enough and had to tap one back there; otherwise it was all drawn through this apparatus.

Q. 87. Then for your ordinary trade?

A. Yes, sir; all drawn through there.

Q. 88. Is it possible that the beer-supply pipes from the upper to the lower ice box could have been covered and you not know of it?

Defendants' counsel objects to the question.

A. No, sir.

Q. 89. Could it have been possible that there were any means for drawing the ice water from the upper ice box to the lower ice box and you not know of it?

Same objection.

A. No, sir.

Q. 90. Was it a part of your daily duties to dip the ice water from the upper ice box?

A. It was.

Q. 91. Did you ever see any one else dip the water from the upper ice box?

A. Yes, sir.

Q. 92. Who?

A. I have seen Mr. Pfefflin and seen Mr. Gunther.

68 Q. 93. Have you any recollection of Mr. Meinhard's ever having called your attention to the amount of water in the upper ice box and directing you to dip it out and to see thereafter that it was dipped out more regularly?

A. He has drawed my attention to it and told me to keep it dipped out and filled up with ice.

Q. 94. You say each beer faucet had a coil of pipe in the bottom of the upper ice box; were these coils of pipe in this ice box when you went there?

A. Yes, sir.

Q. 95. And how was it when you left there?

A. Just the same.

Q. 96. There was always these coils of pipe in the upper ice box?

A. Yes, sir.

Q. 97. In going down cellar and into the lower ice box could these beer-supply pipes be clearly seen?

A. Yes, sir.

Q. 98. Who kept the key to the wine cellar?

A. It was always hanging back of the bar on a board.

Q. 99. When you were barkeeper did you go into the wine cellar?

A. Yes, sir.

Q. 100. How often?

A. Two or three times a day and sometimes more.

69 Q. 101. State whether or not in going into the wine cellar you would see these beer-supply pipes.

A. Yes, sir.

Q. 102. How were they as to being covered or uncovered in the wine cellar?

A. They were bare.

Q. 103. When you was waiter boy did you have to go into the lower ice box to get ice?

A. Yes, sir.

Q. 104. Did you have to put ice on this shelf at different times?

A. The iceman generally used to do that.

Q. 105. Who took the beer kegs into the lower ice box when they were delivered?

A. The peddlar.

Q. 106. By peddlar do you mean the man that drove the team?

A. Yes, sir.

Q. 107. In taking the beer kegs from the wagon into the ice box would the driver pass the point where the beer-supply pipes came through the floor and into the wine cellar?

A. Yes, sir.

Q. 108. Was there any way of lighting the cellar?

A. Gas.

Q. 109. Where was the gas jet?

A. Right around these pipes.

Q. 110. Was it on the wine-cellar side or the ice-box side?

70 Defendants' counsel objected to the question.

A. It was on the wine-cellar side.

Q. 111. You may state whether or not the gas was usually kept burning in the cellar.

A. Yes, sir; always was.

Q. 112. Was there any other way of lighting the lower cellar besides this one gas jet?

A. That was all.

Q. 113. Did I understand you to say that when you left Mienhard's you went to shoemaking?

A. Yes, sir.

Q. 114. And has that been your business since that time?

A. Yes, sir.

Q. 115. Examine the model now shown you, marked "model of Meinhard apparatus," and state whether or not you find that to be a correct model of Meinhard's beer drawing and cooling apparatus.

Defendants' counsel objected to the question upon the ground that the model is not properly proven.

A. That is as near as it could be made.

The model referred to offered in evidence and marked Complainant's Exhibit Model of Meinhard's Apparatus. Defendants' counsel objected to it upon the ground that the model is not properly proven.

Q. 116. Then do you regard this as a correct model of the Meinhard apparatus?

71 Defendants' counsel objected to the question.

A. I do.

Q. 117. Tell us what this place partitioned off which I have marked with the letter "A" was.

A. A water-closet.

Q. 118. And what does this which I have marked "B" represent?

A. That is the ice box upstairs.

Q. 119. State what you know about that ice box marked "B."

A. A common ice box, and all we kept in there was wine and seltzer and ham and such stuff.

Q. 120. And what is this which I have marked "C"?

A. That is the ice box back of the bar for drawing beer.

Q. 121. Is that, then, what you have referred to as the upper ice box forming a part of Meinhard's beer drawing and cooling apparatus?

A. Yes, sir.

Q. 122. Does this position that I have marked "Y" represent the saloon floor?

A. Yes, sir.

Q. 123. What was the distance from the floor of the saloon to the bottom of the upper ice box, which I have marked "C"?

A. I don't understand.

Q. 124. What was the distance from the floor of the saloon to the bottom of the upper ice box, in which the coils of pipe rested?

72 A. You mean how high it was?

Q. 125. Yes, sir.

A. That might have been three or four feet.

Q. 126. Was there a closet underneath this upper ice box?

A. Yes, sir.

Q. 127. Was there any way of drawing the water from the upper ice box off into this closet?

A. No, sir.

Q. 128. No water went into this closet, then?

A. No, sir; none at all.

Q. 129. Does the lower part of this model which I have marked E represent the floor of the cellar underneath the saloon?

A. Yes, sir.

Q. 130. And what does the part which I have marked P represent?

A. That is the bottom ice box in the cellar.

Q. 131. That, then, is the lower ice box in the cellar that we have been referring to, is it?

A. Yes, sir.

Q. 132. Having carefully examined this model, you may state whether or not it correctly represents the course of the beer-supply pipes as they came through the floor and passed into the wine cellar and then into the lower ice box.

A. Yes, sir.

Q. 133. What, if anything, does this brass bracket on the model represent?

A. Gas.

73 Q. 134. You may state whether or not that correctly represents the location of the gas jet in the cellar.

A. It was right near those pipes.

Q. 135. And did the light from the gas show clearly upon the beer-supply pipes?

A. It did.

Q. 136. At which end, as represented in this model, were the beer kegs slid into the cellar?

A. Right in through here (through the part marked M).

Q. 137. Does this part partitioned off at the rear of the upper ice box represent the hall?

A. Yes, sir.

Q. 138. And does this part which was partitioned off in the cellar represent the passage-way that was in the cellar?

A. Yes, sir; the cellar here and under the hall (pointing to E), where the ice box is in the cellar and the wine-room—that is, a cellar under the hallway.

Q. 139. That is the cellar under the upper hallway?

A. Yes, sir.

Q. 140. During the time you worked at Meinhard's did the beer-supply pipes have any rubber upon them, such as shown by this model, "Defendant's Exhibit Meinhard Apparatus Model"?

A. No, sir.

Q. 141. Did the beer-supply pipes enter the front of the lower ice box, as shown in this model, "Defendants' Exhibit Meinhard Apparatus Model"?

A. No, sir.

74 Q. 142. During all the time you worked at Meinhards', both as waiter boy and bartender, did you ever see the beer-supply pipes covered with any rubber hose such as represented in this model?

A. No, sir.

Q. 143. Is it possible, Mr. Stief, during the time you tended bar at Meinhard's in 1879 that the beer-supply pipes from the upper to the lower ice box could have been covered with rubber hose such as shown in this model, "Defendants' Exhibit Meinhard Apparatus Model"?

A. No, sir.

Q. 144. Were you familiar with Meinhard's beer drawing and cooling apparatus and its construction and operation?

A. I was.

Cross-examination by defendants' counsel, Mr. SULLIVAN:

X Q. 145. Where did you first see this model marked "Complainant's Exhibit Model Meinhard's Apparatus"?

Complainant's counsel objected as immaterial.

A. I saw it at Mr. Magin's.

X Q. 146. When?

A. When he first got it, I guess; when it was first made.

X Q. 147. How long ago was that?

A. I don't remember; it might have been three or four months or longer.

X Q. 148. Who showed it to you?

A. Mr. Magin.

75 X Q. 149. Was it in Mr. Magin's saloon?

A. No, sir.

X Q. 150. Where was it?

A. Upstairs.

X Q. 151. Who was with you on that occasion?
A. Nobody.
X Q. 152. You went there alone?
A. Yes, sir.
X Q. 153. At whose request did you go there?
A. I didn't go there at anybody's request. I went there to get a glass of beer.
X Q. 154. What did he tell you about this model?
A. He told me he had a model made.
X Q. 155. Did he tell you what for?.
A. No, sir.
X Q. 156. Did he tell you who made it?
A. No, sir.
X Q. 157. What did he say about the model?
A. He asked me if that was a correct model and I told him yes.
X Q. 158. Did he tell you who made it?
A. No, sir.
X Q. 159. Did he explain it to you?
A. No, sir.
X Q. 160. How long did you spend in examining it on that occasion?
A. Probably five minutes.
X Q. 161. And where next did you see the model after that?
76 A. Yesterday, I think it was.
X Q. 163. Who showed it to you?
A. Mr. Selden and Mr. Bennett.
X Q. 164. Did they explain it to you?
A. No, sir.
X Q. 165. What did they say about it?
A. They asked me what I thought about it and I told them I thought it was a correct model.
X Q. 166. Was Mr. Magin also present?
A. Yes, sir; he was here.
X Q. 167. You came here with Mr. Magin, did you?
A. No, sir.
X Q. 168. Did you come alone?
A. Yes, sir.
X Q. 169. What time of day was it?
A. In the afternoon.
X Q. 170. About what time?
A. Probably four o'clock.
X Q. 171. Are you certain Mr. Bennett was present?
A. Yes, sir—no; it wasn't yesterday; it was day before yesterday, I think it was.
X Q. 172. Are you certain it was day before yesterday?
A. Yes, sir.
X Q. 173. And was Mr. Bennett then present?
A. Yes, sir.
X Q. 174. At whose request did you come here day before yesterday?
77 A. Mr. Bennett's.

X Q. 175. Who else?
A. And Mr. Magin.
X Q. 176. When did they request you to come here?
A. Day before yesterday.
X Q. 177. Where?
A. Up here.
X Q. 178. Where did you see them when they asked you to come here?
Q. At the Powers hotel.
X Q. 179. You had an appointment to meet them there, did you?
A. No, sir.
X Q. 180. How did you meet them at Powers' hotel?
A. Because he was stopping there. I went there with Mr. Magin.
X Q. 181. You went to Powers' hotel with Mr. Magin to meet Mr. Bennett?
A. Yes, sir.
X Q. 182. And then you had the conversation in the hotel, did you?
A. No, sir; I had it here.
X Q. 183. Then you came to Mr. Selden's office?
A. Yes, sir.
X Q. 184. What time in the day was that?
A. In the afternoon.
X Q. 185. And that was the time you saw this model again?
78 A. Yes, sir.
X Q. 186. Who was present besides Mr. Magin and Mr. Selden and Mr. Bennett on that occasion?
A. Nobody.
X Q. 187. How long did you remain at that time?
A. Probably fifteen minutes.
X Q. 188. Did you go away with Mr. Magin?
A. No, sir.
X Q. 189. Did you go away alone?
A. Yes, sir.
X Q. 190. Who first spoke to you about this Meinhard apparatus?
A. When I first got in with it at all.
X Q. 191. Mr. Schantz?
—. ——.
X Q. 192. Who is he?
A. He works down here in a clothing store.
X Q. 193. Is that Otto Schantz?
A. Yes, sir.
X Q. 194. What did he say about it.
A. He came to the shop after me and asked me if I remembered Meinhard's apparatus and I told him yes.
X Q. 195. What else did he say?
A. He asked me if I would come down to Mr. Magin's at dinner time and I told him yes,
X Q. 196. And you did so, didn't you?
A. Yes, sir.

X Q. 197. And have a talk with Mr. Magin?

A. Not much of anything.

79 X Q. 198. What did you and Mr. Magin have to say?

A. I went up to Powers' block and told there what I knew about it.

X Q. 199. After having a talk with Mr. Magin in his saloon you went with him up to Powers' block?

A. I didn't have a talk with him.

X Q. 200. After going to his saloon you went with him from there to Powers' block?

A. Yes, sir.

X Q. 201. And what did you do at Powers' block?

A. I made an affidavit of what I knew.

X Q. 202. Who went with you to Powers' block?

A. Mr. Magin.

X Q. 203. Anybody else?

A. No, sir.

X Q. 204. Mr. Schantz didn't go with you, then?

A. No, sir.

X Q. 205. Mr. Schantz simply went with you from your shop to Mr. Magin's?

A. Yes, sir.

X Q. 206. And did he remain there?

A. I guess not; I didn't see him after that.

X Q. 207. And you went directly from Magin's saloon to Powers' block?

A. Yes, sir.

X Q. 208. Was that before dinner?

80 A. Just before dinner; about half past eleven.

X Q. 209. While in Magin's saloon, what did Mr. Schantz have to say about this Meinhard apparatus?

Complainant's counsel objected.

A. He had nothing to say and only if I remembered the apparatus and went right up there.

X Q. 210. What did Schantz say?

A. Nothing.

X Q. 211. What did he say when he went in there with you?

A. He told Magin that I was Raymond Stief and that I remembered the apparatus.

X Q. 212. Was that the first talk you had with Schantz about this apparatus?

A. Yes, sir.

X Q. 213. And that talk was had in your shop?

A. No, sir; right across the way, into Karle's saloon. We went there.

X Q. 214. That is Karle's on South St. Paul street?

A. Yes, sir.

X Q. 215. And from Karle's you went to Magin's?

A. Yes, sir.

X Q. 216. And while in Karle's did you have some beer to drink?

A. Yes, sir.

X Q. 217. How long did you remain in Mr. Karle's?

81 A. Just long enough to drink a glass of beer.

X Q. 218. Did you sit down?

A. No, sir.

X Q. 219. What did Mr. Schantz first say to you about this apparatus?

A. He asked me if I remembered the apparatus that Meinhard had for drawing beer, and I told him yes, and he asked me if I would go up to Mr. Magin's when I went to dinner, and I told him I would, and he and I walked down there together and went to Magin's and had a glass of beer there and went to Powers' block.

X Q. 220. Who suggested your going to Karle's?

A. Mr. Schantz, as he came to my shop.

X Q. 221. He waited for you until you got ready and went out?

A. Yes, sir.

X Q. 222. Was it exactly twelve o'clock?

A. No, sir; about eleven o'clock.

X Q. 223. Did Mr. Schantz tell you anything about this apparatus?

A. No, sir.

X Q. 224. What did he say about it?

A. He didn't say nothing.

X Q. 225. He didn't say anything?

A. No, sir.

X Q. 226. What did you say about this apparatus while in Karle's saloon?

A. He didn't say anything. I told him I remembered it.

82 X Q. 227. And that was all was said about it?

A. Yes, sir.

X Q. 228. Didn't describe it to him?

A. No, sir.

X Q. 229. Didn't ask you to describe it?

A. No, sir.

X Q. 230. Did he describe it to you?

A. No, sir.

X Q. 231. Nothing said about it?

A. No, sir; nothing at all.

X Q. 232. Except that he asked you if you remembered the apparatus and you told him you did?

A. Yes, sir.

X Q. 233. And you went from there to Magin's?

A. Yes, sir.

X Q. 234. And Mr. Schantz introduced you to Mr. Magin?

A. Yes, sir. Come to think, Mr. Schantz didn't go with me. I went to the shop and worked half an hour, and then went to Mr. Magin's saloon.

X Q. 235. And Mr. Schantz asked you to go there?

A. Yes, sir.

X Q. 236. And had a talk with Mr. Magin?

A. No, sir.

X Q. 237. When you first went into Mr. Magin's saloon what did you say?

83 A. Mr. Schantz told him I was Raymond Stief and asked me to have a glass of beer, and asked me if I remembered it and I told him yes.

X Q. 238. When did Mr. Schantz tell him you were Raymond Stief?

A. That same afternoon.

X Q. 239. Did Mr. Schantz tell you that he told Mr. Magin that you were Raymond Stief?

A. He told him right there and I heard him.

X Q. 240. When was that?

A. That same afternoon.

X Q. 241. I thought you said Mr. Schantz didn't go with you?

A. I did; that was after I got to his saloon.

X Q. 242. Then you had an appointment with him to meet you at Mr. Magin's saloon?

A. Yes, sir.

X Q. 243. And Mr. Schantz didn't go with you from Mr. Karle's to Mr. Magin's saloon?

A. No, sir.

X Q. 244. And what was the next thing Mr. Schantz said to you after you got in there?

A. I don't remember as he said anything.

X Q. 245. What did you first say to Mr. Magin?

A. I didn't say nothing to him.

X Q. 246. Did Mr. Magin tell you why he sent for you?

A. No, sir; I don't think he sent for me.

X Q. 247. Didn't Mr. Schantz tell Mr. Magin why you came there?

84 A. Not while I was there.

X Q. 248. And then, without saying anything in Mr. Magin's saloon, you came to Powers' block?

A. Yes, sir.

X Q. 249. And there you made an affidavit?

A. Yes, sir.

X Q. 250. Do you know before whom you made this affidavit?

A. Yes, sir.

X Q. 251. Who was it?

A. Mr. Cronise, I think his name is.

X Q. 252. Was he Mr. Magin's attorney?

A. I don't know.

X Q. 253. Was the affidavit ready for you to sign when you got there?

A. No, sir.

X Q. 254. Who drew the affidavit?

A. Mr. Cronise.

X Q. 255. Did you see him draw it?

A. Yes, sir.

X Q. 256. How long did it take?

A. Over half an hour or more.

X Q. 257. Who was with you during that time?
A. Mr. Magin.
X Q. 258. Any one else?
A. No, sir.
X Q. 259. Where did you leave Mr. Schantz?
A. He was in Mr. Magin's when we left there; he was going to dinner.
85 X Q. 260. He went from there to dinner, did he?
A. I suppose he did.
X Q. 261. But you had your dinner at this time?
A. No, sir.
X Q. 262. You didn't have your dinner at this time?
A. No, sir.
X Q. 263. Didn't you testify a moment ago that you returned to your work after dinner and worked for half an hour and then went down there?
A. No, sir.
X Q. 264. Then you went without your dinner on this day?
A. Yes, sir.
X Q. 265. Why did you do that?
A. It was too late for dinner.
X Q. 266. Why was it?
A. Because I couldn't get back in time to go to the shop.
X Q. 267. What time did you have to return to the shop?
A. About one or half past one.
X Q. 268. What time did you return there on this day?
A. About one o'clock.
X Q. 269. Did you return to the shop after leaving Mr. Cronise's office?
A. Yes, sir.
86 X Q. 270. And you got to Mr. Magin's saloon about what time?
A. About twelve o'clock.
X Q. 271. Then it took you about an hour to go from Mr. Magin's saloon to Powers' block and make this affidavit and back to the shop?
A. Yes, sir.
X Q. 272. Was this affidavit prepared with a typewriter or was it written out?
A. Written out.
X Q. 273. Do you know in whose handwriting it was?
A. No, sir. Who wrote the affidavit do you mean?
X Q. 274. Yes.
A. Mr. Cronise.
X Q. 275. Was there a copy of it made while you were there?
A. Not that I know of.
X Q. 276. After the affidavit was prepared you signed it there, did you?
A. Yes, sir.
X Q. 277. And in Mr. Cronise's office?
A. Yes, sir.

X Q. 278. And before Mr. Cronise?

A. Yes, sir.

X Q. 279. You are certain you didn't go out of the office after Mr. Cronise prepared the affidavit before you signed it?

A. No, sir.

87 X Q. 280. You went directly from Cronise's office to your shop?

A. I did.

X Q. 281. And Mr. Magin was there during all that time?

A. Yes, sir.

X Q. 282. Did they have this model, "Complainant's Exhibit Meinhard Apparatus," there at that time?

A. No, sir.

X Q. 283. You made two affidavits in the case of Magin *vs.* Welker, didn't you?

A. I don't remember.

X Q. 284. Don't you recollect that you made more than one affidavit?

A. No, sir; I do not.

X Q. 285. You think you are certain the first time you saw this model, "Complainant's Exhibit Meinhard Apparatus," was in Mr. Magin's saloon?

A. Not in the saloon—upstairs.

X Q. 286. And then you next saw it in Mr. Selden's office a couple of days ago?

A. Yes, sir.

X Q. 287. When did you first hear of this litigation about the Meinhard apparatus?

A. I don't know what you mean by litigation.

X Q. 288. This lawsuit.

A. When did I first hear this?

X Q. 289. Yes.

A. The first time I heard of it was after I was up there and made my affidavit.

88 X Q. 290. Had you spoken to any person about it before you made that affidavit?

A. No, sir.

X Q. 291. Had you spoken to Mr. Meinhard about it?

A. No, sir.

X Q. 292. Had Mr. Meinhard spoken to you about it?

A. He tried to, but I never went to see him.

X Q 293. But you had spoken to Mr. Schantz before you made your affidavit?

A. No, sir.

X Q. 294. Didn't you say Mr. Schantz went to your shop and had you come from there over to Mr. Magin's?

A. Yes, sir; but he never spoke anything about it.

X Q. 295. What did he say he wanted you to come to Magin's for?

A. He didn't say.

X Q. 296. Didn't you say a moment ago that he asked you if you remembered the Meinhard apparatus?

A. Yes, sir; and that was all he said.

X Q. —. What did he say?

A. He asked if I remembered the apparatus Meinhard had and I told him yes, and that was all that was said, and he asked me if I would go to Magin's when I was going to dinner.

X Q. 298. While in Mr. Magin's saloon did he have anything to say about this apparatus?

A. No, sir.

89 X Q. 299. You say Mr. Meinhard wanted to talk with you about it, but you wouldn't talk with him?

A. He told my brother for me to drop into his place; that he wanted to see me.

X Q. 300. But you never went there?

A. No, sir.

X Q. 301. How long have you known Mr. Meinhard?

A. Ever since I first came to Rochester and he started to run that place over there.

X Q. 302. When was that?

A. I don't remember; probably 1876.

X Q. 303. You didn't commence working for him when he first started business there?

A. No, sir.

X Q. 304. You did commence working for him in 1877, you say?

A. Yes, sir.

X Q. 305. How old were you in 1877?

A. Twenty-one years or twenty.

X Q. 306. How old are you now?

A. Twenty-seven.

X Q. 307. Are you certain you were twenty in 1877?

A. Yes, sir.

X Q. 308. You said you were a shoemaker by trade, I believe?

A. Yes, sir.

X Q. 309. Were you working at your trade at that time, in 1877?

90 A. No, sir.

X Q. 310. When did you commence working at your trade?

A. The latter part of 1879.

X Q. 311. Who did you begin working for?

B. Boor & Co.

X Q. 312. Where did you learn your trade?

A. On River street, with Boor & Co.

X Q. 313. Were you learning your trade in the year 1877 or 1878?

A. I went there to learn it. I was working around the place there.

X Q. 314. With Boor & Co.?

A. Yes, sir.

X Q. 315. You were an apprentice for two or three years before you became a regular shoemaker, were you?

A. About a year.

X Q. 316. What year was that?

A. Probably 1880 or after 1880.

X Q. 317. Did you work at the shoe business any while you were working for Mr. Meinhard?

A. No, sir.

X Q. 318. You commenced working at the shoe business after you left Mr. Meinhard, did you?

A. Yes, sir.

X Q. 319. Are you a brother of Albert Stief?

A. Yes, sir.

91 X Q. 320. What has been his business for the last six or eight or ten years?

A. Tending bar.

X Q. 321. He is a bartender, then, by occupation, is he?

A. Yes, sir.

X Q. 322. Did he work for Mr. Meinhard while you did?

A. Sundays; yes, sir. I worked there Sundays while he worked there steady.

X Q. 323. He gave most of his time to tending bar, did he?

A. For one time he did there; while he was waiter boy he was.

X Q. 324. When was that?

A. I don't remember; he was a machinist.

X Q. 325. Was that while he was working for Gilbert & Meinhard that he gave his whole time to being a waiter boy or tending bar while working for Meinhard?

A. Yes, sir.

X Q. 326. How long did your brother work for Mr. Meinhard?

A. I don't know how long he did work.

X Q. 327. About how long?

A. I couldn't say; probably he worked there a year and probably didn't.

X Q. 328. Did he work there more than a year?

A. I don't know.

X Q. 329. Off and on, for how many years did he work there?

92 A. It might have been a couple of years.

X Q. 330. What years were those?

A. 1876, probably.

X Q. 331. Commenced working in 1876?

A. I couldn't say; I can't tell the year.

X Q. 332. Was he working there when you went to work for Gilbert & Meinhard?

A. Yes, sir.

X Q. 333. What was he doing there at that time?

A. He was tending bar there.

X Q. 334. When you first commenced working for Meinhard it was as waiter boy?

A. Yes, sir.

X Q. 335. And after working for him a couple of years as waiter boy you say you acted as bartender for awhile?

A. Yes, sir.

X Q. 336. When did your brother quit working for Meinhard?

A. I don't remember. I think he quit work when I went to work there.

X Q. 337. Didn't he work there after you quit working?

A. No, sir.

X Q. 338. When did you quit working for Mr. Meinhard?

A. In 1879.

X Q. 339. And you worked for Mr. Meinhard after your brother quit working for him?

A. Yes, sir.

93 X Q. 340. Who was Mr. Meinhard's regular bartender while you were working there?

A. He had no regular bartender. We all used to tend bar. There was three of us.

X Q. 341. Who were they?

A. Mr. Pfefflin, Felix Guenther, and myself.

X Q. 342. Did Mr. Guenther have charge of the bar?

A. Yes, sir; he used to open up in the morning.

X Q. 343. He was, then, what was called the head bartender?

A. There was no head bartender there.

X Q. 344. Was he some older than you?

A. Yes, sir.

X Q. 345. How old a person was Mr. Guenther at that time?

A. He might have been thirty-five years old.

X Q. 346. He wasn't one of the waiter boys in the garden, then?

A. No, sir.

X Q. 347. How many waiter boys did they have in this garden while you were working for Mr. Meinhard?

A. They had eight or ten, and sometimes twelve and more.

X Q. 348. The garden was open on week days as well as Sundays?

A. It was, if any one wanted to go in. There wasn't anything going on.

X Q. 349. Sunday was the principal day there?

A. Yes, sir; unless it was rented.

94 X Q. 350. And when you first commenced working for Mr. Meinhard you worked chiefly in this garden, did you?

A. Yes, sir.

X Q. 351. Who had charge of the garden?

A. Nobody, only the proprietors.

X Q. 352. Mr. Gilbert and Mr. Meinhard?

A. Yes, sir.

X Q. 353. Was Mr. Meinhard the active man of the firm, looking after the management of the business?

A. Yes, sir.

X Q. —. Mr. Gilbert spent most of his time in the saloon, did he not?

A. During the day generally.

X Q. 355. Mr. Gilbert is a much stouter man than Mr. Meinhard?

A. Yes, sir.

X. Q. 356. He didn't have much to do about the management of the business, did he?

A. No, sir.

X Q. 357. What was Mr. Gilbert's business?

A. Clothing cutter.

X Q. 358. He is now engaged in that business, isn't he?

A. Yes, sir.

X Q. 359. And while you worked for them didn't Mr. Gilbert devote most of his time while in the saloon to entertaining the customers and drinking with them?

95 A. Yes, sir; he was around there all the while.

X Q. 360. He didn't have much to do about the bar, did he?

A. During the day.

X Q. 361. Did he act as bartender?

A. Yes, sir.

X Q. 362. Steadily?

A. Off and on, just as he felt like it.

X Q. 363. But his business wasn't that of a bartender, was it?

A. No, sir.

X Q. 364. Where is Mr. Guenther now, if you know?

A. I couldn't say.

X Q. 365. Did you know Mr. Fred. Gutacher?

A. Yes, sir.

X Q. 366. What was his business about there?

A. I don't know as he had any business about there.

X Q. 367. What did he do about there?

A. I only saw him around the bar once in awhile when there was a picnic or something.

X Q. 368. Do you know who put this apparatus in for Mr. Meinhard?

A. No, sir.

X Q. 369. You didn't see who put it in, then?

A. No, sir.

X Q. 370. Was it there when you commenced working for Mr. Meinhard?

A. Yes, sir.

96 X Q. 371. Were there any changes made in it while you worked there?

A. No, sir.

X Q. 372. There was also a large ice box upstairs in this saloon?

A. Yes, sir.

X Q. 373. Was that there also when you commenced working for them?

A. Yes, sir.

X Q. 374. And it remained there while you worked there?

A. Yes, sir.

X Q. 375. Do you know Mr. Barr?

A. Yes, sir.

X Q. 376. Did you see him about there at any time making repairs on this apparatus?

A. No, sir.
X Q. 377. Do you know Mr. Adolph Cassebeer?
A. I know him by sight.
X Q. 378. Do you know his business?
A. Plumber, I believe.
X Q. 379. Did you see him there at any time making repairs on this apparatus?
A. No, sir.
X Q. 380. Do you know Mr. Schaub?
A. No, sir.
X Q. 381. You have heard about Mr. Schaub, have you?
A. No, sir.
X Q. 382. What is your business now?
97 A. Shoemaker.
X Q. 383. Who are you working for?
A. Bolton.
X Q. 384. Do you visit Mr. Magin's saloon occasionally?
A. Not very often.
X Q. 385. How often?
A. I may go by that way once a month and go in there.
X Q. 386. Where do you live?
A. On Galusha street.
X Q. 387. Is Mr. Magin's saloon near Bolton's shop?
A. Yes, sir.
X Q. 388. How near it?
A. On the opposite corner.
X Q. 389. It is quite a resort for those shoemakers and people employed in that vicinity, is it not?
A. I don't know as it is. They seem to be around the different places all the while. I don't know whether his place is or not.
X Q. 390. Is his place more frequented than Mr. Schwartz's?
A. I don't know him.
X Q. 391. Who keeps a saloon on the corner west of Mr. Magin's?
A. I don't know the man's name.
X Q. 392. He keeps opposite Mr. Magin, does he not?
A. Yes, sir.
98 X Q. 394. There is a saloon on the corner west of Mr. Magin, is there not?
A. Yes, sir.
X Q. 395. You don't know who keeps it?
A. I do not.
X Q. 396. How often has Mr. Magin spoken to you about this apparatus of his?
A. He hasn't spoken to me at all about it.
X Q. 397. He never spoke to you about it?
A. No, sir.
X Q. 398. Has Mr. Gordon ever spoken to you about it?
A. No, sir.
X Q. 399. Do you know him?
A. Yes, sir.
X Q. 300. Where did you first see him?

A. I have known him a good many years.
X Q. 401. Have you seen him in Mr. Magin's saloon?
A. Yes, sir.
X Q. 402. When?
A. Quite awhile ago; I don't know when.
X Q. 403. Has he ever spoken to you about this apparatus?
A. No, sir.
X Q. 404. Ever said anything to you about it?
A. No, sir.
X Q. 405. Have you ever spoken to him about anything?
A. No, sir.
99 X Q. 406. You say when you commenced working for Mr. Meinhard he had this apparatus in his saloon?
A. Yes, sir.
X Q. 407. And it was there when you left, was it?
A. It was.
X Q. 408. And he continued to use it during that time?
A. Yes, sir.
X Q. 409. And he was using it when you left?
A. Yes, sir.
X Q. 410. Was the beer which was used in the summer garden taken from the cellar?
A. Yes, sir.
X Q. 411. Or was it rolled in from the delivery wagon?
A. It was taken from the cellar.
X Q. 412. They would first store it in the cellar and then bring it out of the cellar into the garden, would they?
A. Yes, sir.
X Q. 413. And were you in the habit of bringing up those kegs?
A. Sometimes.
X Q. 414. Who assisted you?
A. Mr. Guenther and anybody that happened to be around.
X Q. 415. One young man couldn't bring them up alone?
A. Not very well.
100 X Q. 416. Whereabouts in the cellar were those kegs of beer located?
A. In the large ice box.
X Q. 417. Not in the wine cellar, then?
A. No, sir.
X Q. 418. So that in getting beer out of the cellar you didn't have occasion to go into the wine-room?
A. No, sir.
X Q. 419. Was there much wine drank in the beer garden?
A. Yes, sir; a good deal of it.
X Q. 420. When a bottle of wine was ordered who would bring it up from the cellar?
A. We would fetch up enough at one time until it run out and go down and get some more.
X Q. 421. Bring up a quantity and place it behind the bar?
A. Yes, sir.

X Q. 422. And when a bottle of wine was ordered you would go to the bar and get it?

A. Yes, sir.

X Q. 423. Who kept the key to the wine cellar?

A. Back of the bar, in the bar-room.

X Q. 424. The waiter boys were not allowed to take that wine key, were they?

A. Not allowed to take it unless they were asked by some one to go down and help them.

X Q. 425. Mr. Meinhard or Mr. Gilbert, I suppose, had charge of the wine key?

A. Not necessarily.

101 X Q. 426. Or the bartender?

A. Yes, sir.

X Q. 427. This wine cellar was kept locked, wasn't it?

A. Yes, sir.

X Q. 428. Were there more keys than one to the wine cellar?

A. No, sir.

X Q. 429. What else did they keep in the wine cellar besides wine?

A. Kept cider and different kinds of wine, and that was about all.

X Q. 430. Kept a quantity of wine stored there, did they?

A. Yes, sir.

X Q. 431. And some good brands of wine, didn't they?

A. Yes, sir; and liquors and such things?

X Q. 432. Liquors of different kinds?

A. Yes, sir.

X Q. 433. And brandies?

A. Yes, sir.

X Q. 434. And gin?

A. Yes, sir.

X Q. 435. Whisky and, in fact, all kinds of liquors?

A. Yes, sir.

X Q. 436. And port and sherry wine?

A. Yes, sir.

X Q. 437. What length, east and west, was the wine cellar?

102 A. I never measured it; it might be fifteen or twenty feet.

X Q. 438. And what was the length, east and west, of this lower ice box?

A. Probably eight feet.

X Q. 439. And what was the height.

A. It might have been eight feet, too.

X Q. 440. Was the cellar eight feet in height?

A. I suppose it was; yes, sir. It was as high as the ice box; it was built from the floor to the ceiling.

X Q. 441. Did you ever measure the height of the cellar?

A. No, sir.

X Q. 442. Was that box originally constructed for an ice box?

A. Yes, sir.

X Q. 443. But it was considerably larger than the ordinary ice box, wasn't it?

A. I never have seen another ice box.

X Q. 444. This is the only ice box you have ever seen, then?

A. Yes, sir.

X Q. 445. And this lower ice box stood up against the south wall of the cellar?

A. Yes, sir.

X Q. 446. Did it extend from the ceiling to the floor?

A. Yes, sir.

X Q. 447. Anything between the ceiling and the top of the ice box?

A. No, sir.

103 X Q. 448. Did you ever examine that part of it?

A. Yes, sir.

X Q. 449. What was the occasion of your examining it?

A. Because there was a pair of stairs run up by that ice box that came from upstairs, and I go up those stairs and could get up to the top of it. The stairs were never used, but I got to the top of it lots of times, and used to put candles and things on the stairs.

X Q. 450. Did these stairs come down from the saloon?

A. Yes, sir.

X Q. 451. In going out of the saloon into the cellar in what direction would you go?

A. I go west.

X Q. 452. You would go west first?

A. Yes, sir; and then down south—down the stairs—and then turn east into the cellar.

X Q. 453. And when you landed in the cellar you landed in front of the large ice box?

A. Yes, sir.

X Q. 454. Was there a door in this large ice box?

A. Yes, sir.

X Q. 455. And what part of the ice box was it?

A. The front of the ice box.

X Q. 456. And about the middle of it?

A. About in the middle of the ice box.

104 X Q. 457. In going into the lower ice box to get a keg of beer you wouldn't have occasion to go past the wine-room, then?

A. No, sir.

X Q. 458. Was there also a door in the wine-room?

A. Yes, sir.

X Q. 459. Whereabouts in the wine room was the door?

A. It was right a little beyond the ice box.

X Q. 460. Was the gas jet which you claim was there east or west of that door?

A. It was west.

X Q. 461. How far west of that door was it?

A. Probably a foot or so.

X Q. 462. And which way did the door swing?

A. Swung to the west?
X Q. 463. Did you ever light that gas jet?
A. I have lit it.
X Q. 464. How often?
A. Not very often.
X Q. 465. How often would you say?
A. I wouldn't have occasion to turn it out at all sometimes. I would light it sometimes.
X Q. 466. Did you have any difficulty in reaching it?
A. No, sir.
X Q. 467. Would you light it by a match?
A. Yes, sir.
105 X Q. 468. How large was the door in the ice box?
A. I couldn't say; probably five feet.
X Q. 469. In height, do you mean?
A. Yes, sir.
X Q. 470. What was the width of it?
A. Probably two feet and a half, or somewheres along there.
X Q. 471. How large was the door in the wine cellar?
A. I never measured it.
X Q. 472. About how large would you say it was?
A. Probably six feet high.
X Q. 473. And how wide?
A. Probably two feet.
X Q. 474. It extended nearly to the top, then?
A. Pretty near.
X Q. 475. Was it a heavy or light door?
A. Light.
X Q. 476. What was it made of?
A. Slabs.
X Q. 477. The same kind of an opening as the cellar itself, I suppose?
A. Yes, sir.
X Q. 478. Did you notice any gas or water pipes in this cellar?
A. Yes, sir.
X Q. 479. Whereabouts did they run?
106 A. The gas pipes—there was only one, the jet at the wine cellar. The water pipe was up a little from the ice box, by the wall, fastened there.
X Q. 480. Fastened to the ceiling?
A. No, sir; came down the side of the wall.
X Q. 481. Did the water pipe come down alongside of the wall?
A. Yes, sir.
X Q. 482. And ran along the ceiling whatever was necessary, I suppose?
A. Yes, sir.
X Q. 483. Did the gas pipe run the same way?
A. Yes, sir.
X Q. 484. The gas and water pipes were near each other, were they?

A. No, sir.

X Q. 485. How far apart were they?

A. Half the length of the cellar, probably.

X Q. 486. How many water pipes were they?

A. Only one.

X Q. 487. Were there any other pipes besides gas pipes and water pipes?

A. And beer pipes.

X Q. 488. And what other kind of pipes?

A. That is all that I know of.

X Q. 489. And they were all quite near each other, were they?

A. The beer and gas pipes were.

X Q. 490. In going down cellar for a keg of beer you would have to take a light with you, would you?

107 A. Yes, sir.

X Q. 491. Candle, usually?

A. Yes, sir.

X Q. 492. Did they keep a candle down cellar for that purpose?

A. Yes, sir.

X Q. 493. Would you take the candle down lighted or light it when you got down there?

A. Light it when we got down there.

X Q. 494. How many candles did they have there?

A. One or two around there.

X Q. 495. It was quite dark inside the lower ice box, I suppose?

A. Yes, sir.

X Q. 496. How many kegs did they usually keep tapped there?

A. Two.

X Q. 497. And how many kegs would they keep stored?

A. As high as thirty or forty.

X Q. 498. Mr. Meinhard, while you worked for him he done a pretty large business, didn't he?

A. Yes, sir.

X Q. 499. He kept what was called Falls Field?

A. Yes, sir.

X Q. 500. And at that time it was a very popular place, wasn't it?

A. Yes, sir.

X Q. 501. Did he do the largest business in the city at that time?

108 A. I couldn't say whether he did or not.

X Q. 502. Was he not so considered?

A. I don't know as he was, taking the week through. He didn't do very much during the week.

X Q. 503. But on Sundays he did a very large business?

A. Yes, sir.

X Q. 504. From where did Mr. Meinhard buy his beer while you worked there?

A. He bought it from several breweries.

X Q. 505. While you worked for Mr. Meinhard how often did you go into this wine cellar?

A. Four or five times a day sometimes. I went in there once or twice a day regularly.

X Q. 506. Did the other boys go in as often as you or oftener?

A. About the same.

X Q. 507. Were all the waiter boys in the habit of going to this wine cellar?

A. No, sir.

X Q. 508. It was only those who tended bar that went in there?

A. Yes, sir.

X Q. 509. And during the time you tended bar you used to go into the wine cellar frequently?

A. Yes, sir.

X Q. 510. As often as four or five times a day?

A. Sometimes.

109 X Q. 511. Wasn't it the custom in the bar to keep a few bottles of wine in the saloon?

A. Yes, sir.

X Q. 512. For the day's use?

A. Yes, sir.

X Q. 513. What time in 1877 did you begin working for Mr. Meinhard?

A. In the spring of the year.

X Q. 514. And you continued working for him as waiter boy until what time in 1879?

A. In the spring.

X Q. 515. And then you quit for awhile, and then you commenced working again for him?

A. No, sir; I didn't quit.

X Q. 516. You continued working for him right along from the time you commenced?

A. Yes, sir.

X Q. 517. And some time in 1879 you commenced working in the bar for him?

A. Yes, sir.

X Q. 518. And after you commenced working in the bar did you also work for him in the garden?

A. I used to work back of the bar in the garden then.

X Q. 519. They also had a bar in the garden, did they?

A. In the large hall.

X Q. 520. That wasn't the saloon, then?

A. No, sir.

110 X Q. 521. So that you were his bartender in what you call the hall?

A. No, sir; in the saloon.

X Q. 522. And you were also a bartender in the hall?

A. Yes, sir.

X Q. 523. While you were his bartender in the saloon did you also wait on customers in the garden?

A. No, sir.

X Q. 524. How was it on Sundays?

A. Used to work in the saloon until Sunday evenings and then would go back of the bar in the hall?

X Q. 525. They didn't have much trade in the saloon on Sundays?

A. They had quite a good deal of it.

X Q. 526. But when the concerts commenced Sunday evenings they required your assistance there?

A. They closed up the saloon then.

X Q. 527. When did they open the concert hall on Sundays?

A. At seven o'clock.

X Q. 528. Seven o'clock Sunday nights?

A. Yes, sir.

X Q. 529. And was the saloon kept open on Sunday up to that time?

A. Yes, sir.

X Q. 530. Did you tend bar in the saloon on Sunday?

111 A. Yes, sir.

X Q. 531. Did you have an assistant during that time?

A. Yes, sir.

X Q. 532. Who was the assistant?

A. Mr. Guenther.

X Q. 533. Did you ever assist your brother in the saloon?

A. No, sir.

X Q. 534. You worked there while he did, didn't you?

A. Yes, sir.

X Q. 535. How long, east and west, was this cellar under Meinhard's saloon?

A. I don't know; it might have been, probably, 25 feet.

X Q. 536. What was the distance between the west end of this ice box and the west end of the cellar?

A. There wasn't any space there at all, and was right in the corner.

X Q. 537. The large ice box, then, extended to the west cellar wall of the cellar?

A. Yes, sir.

X Q. 538. And did this large ice box and wine cellar occupy the whole space between the west cellar wall and the front cellar wall?

A. No, sir.

X Q. 539. Then the wine cellar did not extend to the east cellar wall?

A. No, sir.

112 X Q. 540. How much of a space was there?

A. Probably four or five feet.

X Q. 541. What was kept in that space?

A. A gas meter.

X Q. 542. Anything else kept there?

A. That is all I know of.

X Q. 543. What became of the ice water in the lower ice box?

A. We used to clean it out once or twice a week. That is all I ever saw become of it.

X Q. 544. When the ice melted in the lower ice box what became of the water?

A. I don't know.

X Q. 545. Did it run away?

A. No, sir; I never saw any place for it to run away.

X Q. 546. Did they have a sewer there?

A. No, sir.

X Q. 547. They kept a large quantity of ice there, didn't they?

A. Had it filled with whatever was necessary.

X Q. 548. How often did they fill the ice box?

A. Twice a week.

X Q. 549. And what quantity of ice did they put in there at a time?

A. I couldn't say.

X Q. 550. About how much would you say?

A. Probably four or five cakes.

X Q. 551. As much as a ton of ice or more?

113 A. I don't know how much one of the cakes would weigh.

X Q. 552. How large are the cakes?

A. Probably two feet square.

X Q. 553. And you think they put the ice in there about twice a week?

A. Yes, sir.

X Q. 554. Did they have any particular days for delivering ice?

A. Not that I remember of.

X Q. 555. Didn't they put in a quantity of ice there of Saturday for Sunday trade?

A. Yes, sir.

X Q. 556. Did they put in any more on Saturdays than other days of the week?

A. I guess not.

X Q. 557. You say this ice was all placed in the lower ice box?

A. Yes, sir.

X Q. 558. And the kegs of beer stood on their ends, did they?

A. Yes, sir.

X Q. 559. Or laid on their sides?

A. Or on their ends.

X Q. 560. What was the object of having the beer kegs standing on their ends?

A. I couldn't say.

X Q. 561. Would it make the beer better?

A. I suppose they could get more into the box.

X Q. 592. Did they keep any ale on tap in this lower ice box?

114 A. No, sir; never had any ale there.

X Q. 563. It was all lager, was it?

A. Yes, sir.

X Q. 564. What was the size of this large ice box upstairs, marked on the model "B"?

A. It might have been 6 feet high or 7.

X Q. 565. And how wide?

A. Four or five.
X Q. 566. And what depth?
A. A couple of feet.
X Q. 567. It was deep enough to receive a keg of beer?
A. It was.
X Q. 568. And what was the size of the upper ice box in this apparatus?
A. Probably three feet in height.
X Q. 569. And what depth and width?
A. Do you want the whole box or the top?
X Q. 570. The depth and the width of the upper ice box.
A. I don't understand whether you want the whole box or the part where you put the ice in.
X Q. 571. Give me the depth of the whole ice box.
A. Three feet.
X Q. 572. And what was its width?
A. Foot and a half.
X Q. 573. How many faucets did it have?
A. I couldn't say whether three or four.
X Q. 574. And each of these faucets was fastened to the beer-supply pipe?
115 A. Yes, sir.
X Q. 575. What was the length of that beer-supply pipe from where it was fastened to the keg to the faucets in the upper ice box?
A. It might have been probably 7 feet.
X Q. 576. You never measured it, did you?
A No, sir.
X Q. 577. Were all the beer-supply pipes the same length?
A. Yes, sir.
X Q. 578. How many coils in the upper ice box?
A. Three.
X Q. 579. Who put those coils in?
A. I couldn't say.
X Q. 580. Were they in the apparatus when you first saw it?
A. Yes, sir.
X Q. 581. Did you have occasion to clean those beer-supply pipes?
A. No, sir.
X Q. 582. You never cleaned them?
A. Yes, sir; I have cleaned them.
X Q. 583. How often?
A. Once a week.
X Q. 584. Did you take out the coolers?
A. No, sir.
X Q. 585. Did you allow the coolers to remain in the box?
A. Yes, sir.
116 X Q. 586. Who assisted you in cleaning them?
A. Mr. Guenther.
X Q. 587. What did you do in order to clean them?
A. Used to take an empty keg and fill it full of hot water and

soda, and take it back of the bar and run a hose in there, and go down-stairs and let it run in the ice box.

X Q. 588. Would you allow that stuff to run into the lower ice box?

A. Yes, sir.

X Q. 589. In order to have this stuff run into the lower ice box would you have to detach these rubber hose from the lead pipes?

A. No, sir.

X Q. 590. You did not?

A. No, sir.

X Q. 591. You would not allow the rubber hose to remain attached to the kegs?

A. Yes, sir.

X Q. 592. What was the length of this rubber hose?

A. Down in the ice box?

X Q. 593. Yes.

A. They might have been four or five feet.

X Q. 594. And you say they rested on this shelf on which the ice was located?

A. Yes, sir.

X Q. 595. How many feet of that rubber hose rested on those shelves?

A. I couldn't say that; they run just over the shelf.

117 X Q. 596. Was the same quantity of rubber hose on each pipe?

A. No, sir.

X Q. 597. There was some pipes had less rubber hose than the others, was there?

A. Yes, sir.

X Q. 598. What was the reason for that?

A. There was three barrels laid beside one other.

X Q. 599. And the barrel furthest from the place where the pipes came through the ice box had the longest rubber hose, I suppose?

A. Yes, sir.

X Q. 600. How long was that rubber hose?

A. That might have been seven or eight feet.

X Q. 601. And the one next to that; how long was that?

A. I don't know; I never measured it.

X Q. 602. About how long?

A. Probably six feet.

X Q. 603. Just the difference in the thickness of the keg, I suppose?

A. Yes, sir.

X Q. 604. What was the size of this rubber hose?

A. I don't know what was the size of it.

X Q. 605. Was it half an inch or three-quarters?

A. I couldn't tell whether it was half an inch or three-quarters.

118 X Q. 606. It was larger than the beer-supply pipes, was it?

A. Yes, sir.

X Q. 607. Large enough so it could be slipped over the beer-supply pipe easily?

A. No, sir.

X Q. 608. You had some trouble in pulling it over, did you?

A. I never pulled it over.

X Q. 609. Then I understand you the beer-supply pipe was fastened to one end of it?

A. Yes, sir.

X Q. 610. And you think there were how many of those rubber pipes?

A. Three.

X Q. 611. And you can't tell the size of them?

A. No, sir.

Recess until 2 o'clock p. m.

2 P. M.

X Q. 612. What was the size of the beer-supply pipes, the diameter?

A. Half an inch or three-quarters of an inch.

X Q. 613. Of what material were they?

A. Lead.

X Q. 614. Were they lined?

A. I never looked on the inside of them.

X Q. 615. What was the diameter of the rubber hose?

119 A. I don't know what the diameter of that was.

X Q. 616. How was the rubber hose fastened to these supply pipes?

A. I think with a brass coupling.

X Q. 617. And how were the rubber hose fastened to the beer keg?

A. By a brass coupling.

X Q. 618. What was the size of these coils in the upper ice box?

A. Half inch or three-quarters of an inch.

X Q. 619. Were they the same size as the supply pipes?

A. Yes, sir.

X Q. 620. Of the same material?

A. Yes, sir.

X Q. 621. Were the coils made by supply pipe forming a coil in the upper ice box?

A. Yes, sir.

X Q. 622. And then the supply pipe was a continuous pipe from the upper to the lower ice box, was it?

A. Yes, sir.

X Q. 623. And was the upper end of this supply pipe fastened to the faucets?

A. Yes, sir.

X Q. 624. To the inner end of the faucets, were they?

A. Yes, sir.

X Q. 625. The faucets projected outside of the upper side ice box?

A. Yes, sir.

X Q. 626. Did these coolers rest in the bottom of the upper ice box?

A. Yes, sir.

X Q. 627. And the ice and ice water was allowed to remain on top of the coolers?

A. Yes, sir.

X Q. 628. Was this rubber pipe you have described ordinary rubber pipe?

A. Yes, sir.

X Q. 629. Then in the beer passing from the keg to the faucets it will first pass through this rubber hose and then through the supply pipes and through the coils to the faucets in the upper ice box?

A. Yes, sir.

X Q. 630. How was this beer forced?

A. By a pump.

X Q. 631. From the lower ice box to the faucets?

A. By a pump.

X Q. 632. That pump was upstairs, was it?

A. Yes, sir.

X Q. 633. Was it one of those ordinary air pumps?

A. A little square pump that stood on the work board of the bar.

X Q. 634. Did it have pipes running from it to the beer kegs in the cellar?

A. I never took notice of that.

X Q. 635. You never saw any, did you?

A. No, sir.

X Q. 636. Was this pump used all the time you worked for Mr. Meinhard?

A. Not this one.

X Q. 637. They changed the pump, did they?

A. Yes, sir.

X Q. 638. Who put the first in?

A. I don't know; it was there when I got there.

X Q. 639. It was in when you first commenced work there?

A. Yes, sir.

X Q. 640. And while you were working there they changed it?

A. Yes, sir.

X Q. 641. Who changed it?

A. I don't know.

X Q. 642. What kind of a pump did they put in the second time?

A. Square pump.

X Q. 643. Similar to the first?

A. No, sir.

X Q. 644. Did that have pipes?

A. Nothing, only a little piece of hose running into the washing tank.

X Q. 645. What was the length of that hose?

A. About a foot and a half.

X Q. 646. Was there more than one hose?

A. No, sir.

X Q. 647. And that hose remained on this pump all the time you worked there?

122 A. Yes, sir.

X Q. 648. Was this upper ice box lined?

A. Yes, sir.

X Q. 649. What with?

A. Zinc.

X Q. 650. And was the bottom of the upper ice box also lined?

A. I presume it was; you couldn't see the bottom on account of the coils.

X Q. 651. The beer-supply pipes ran through the bottom, did they?

A. I couldn't say.

X Q. 652. You never examined the bottom, then?

A. No, sir.

X Q. 653. What quantity of water did you generally allow to rest in the bottom of the upper ice box?

A. Used to dip it out every time we put in ice; sometimes it would be pretty near full.

X Q. 654. Was there anything kept in the bottom of the upper ice box?

A. No, sir; not that I know of.

X Q. 655. Did this upper ice box have a cupboard under it?

A. Yes, sir.

X Q. 656. Did that cupboard have doors?

A. One.

X Q. 657. You would have no difficulty in seeing into the lower part of the upper ice box by opening that door, would you?

123 A. I don't know that we could see it; it was pretty dark there and boarded up tight.

X Q. 658. You had no occasion to look in there?

A. No, sir.

X Q. 659. You don't know what was in the lower part of that upper ice box, do you?

—. No, sir.

X Q. 660. Do you know if there was anything kept in that cupboard?

A. No, sir; there was not.

X Q. 661. Didn't have any shelves then?

A. No, sir.

X Q. 662. Could you see the supply pipes there?

A. I never took any notice.

X Q. 663. What was the depth of that cupboard?

A. About two feet.

X Q. 664. And how high was it?

A. About three feet; the ice box.

X Q. 665. I mean the cupboard portion of the upper ice box.

A. About two feet.

X Q. 666. And the upper portion of the upper ice box was about a foot in height, then?

A. About a foot or a foot and a half.

X Q. 667. What distance was it from the top of the lower ice box to where the supply pipes entered the box?

A. About five feet.

124 X Q. 668. How large an opening was that?

A. Where?

X Q. 669. Where the supply pipes entered.

A. Entered the ice box down below?

X Q. 670. Yes.

A. Nothing, only a small four-cornered hole in there.

X Q. 671. Did the pipes fill the hole pretty well?

A. Yes, sir; pretty well.

X Q. 672. How many pipes came out of that hole?

A. Three.

X Q. 673. Which corner of the ice box did these pipes enter?

A. Right on the east side near the corner, or northeast corner.

X Q. 674. A person going into the lower ice box, would he have any difficulty in seeing these supply pipes?

A. No, sir.

X Q. 675. How far away were they from the door of the lower ice box?

A. How far from the pipes?

X Q. 676. Yes.

A. Probably five feet.

X Q. 677. How much of the pipes could you see?

A. Could see them until they joined the rubber hore.

125 X Q. 678. How many feet was that?

A. Probably a foot.

X Q. 679. What was the distance from the saloon floor to the top of the lower ice box?

A. No distance at all. The ice box run right up to the floor.

X Q. 680. Did the joist of the floor rest on the ice-box?

A. I believe they did.

X Q. 681. And which way did those joist run, east and west or north and south?

A. North and south, I think.

X Q. 682. Then the supply pipes in passing down into the lower ice box would pass between the joist, would they?

A. No; according to that the joist would run east and west.

X Q. 683. What is the fact about the supply pipes passing between the joist from the upper to the lower ice box?

A. They didn't pass between them; they came below the joist.

X Q. 684. And then entered into the lower ice box?

A. Run off into the lower ice box.

X Q. 685. In which direction did they run going into the lower ice-box?

A. They run west.

X Q. 686. And when they entered the lower ice box which direction did they run?

A. They run south.

126 X Q. 687. And to where the kegs of beer were located in the lower ice box?

A. Yes, sir.
X Q. 688. What was the depth of these joist?
A. I couldn't say; probably a foot.
X Q. 689. Were these coils taken out while you worked for Mr. Meinhard?
A. No, sir.
X Q. 690. They remained in the upper ice box all the time?
A. Yes, sir.
X Q. 691. While you worked for Mr. Meinhard were there any repairs made to these pipes?
A. No, sir.
X Q. 692. Were these supply pipes soldered into the bottom of the upper ice box?
A. I suppose they was. I don't know whether they were soldered or whether they came in through with a collar.
X Q. 693. You never examined them as to that?
A. No, sir.
X Q. 694. Was this lower ice box also lined?
A. Yes, sir.
X Q. 695. What was that lined with?
A. Zinc or tin.
X Q. 696. Was it filled in?
A. Yes, sir.
X Q. 697. With what?
A. I don't know what it was filled in with.
127 X Q. 698. Was the lower ice box square, or how was it in reference to that?
A. It was longer than it was wide.
X Q. 699. How much longer?
A. Probably a couple of feet.
X Q. 700. You think it was about eight feet in height, do you?
A. About that; I never measured it.
X Q. 701. And the length about how much east and west?
A. It might have been seven or eight feet.
X Q. 702. Then it was about square?
A. It wasn't square.
X Q. 703. It wasn't square?
A. No, sir.
X Q. 704. Which was the longest way?
A. The length of it.
X Q. 705. The length east and west?
A. Yes, sir.
X Q. 706. How much longer was it than the height?
A. I don't know if it was any longer than the height.
X Q. 707. Then what do you mean by saying it wasn't square?
A. I mean it wasn't as wide as long.
X Q. 708. What do you call the length of the box?
A. The longest length of it.
X Q. 709. East and west or north and south?
128 A. East and west.

X Q. 710. It was longer east and west than it was north and south, then?

A. Yes, sir.

X Q. 711. And how long was it east and west?

A. Probably seven or eight feet.

X Q. 712. And how long was it north and south?

A. Five or six.

X Q. 713. And how high was it?

A. About eight feet.

X Q. 714. Was the upper ice box directly over the lower ice box?

A. East.

X Q. 715. Was the upper ice box east or west of the lower ice box?

A. East.

X Q. 716. How far east?

A. Probably five feet.

X Q. 717. Four feet?

A. Four or five feet.

X Q. 718. You never saw any tin pipes, then, in this upper ice box?

A. No, sir.

X Q. 719. Did you see any pails or tubs in the cupboard to receive the water from the upper ice box?

A. No, sir.

X Q. 720. Were there any there, to your knowledge?

A. Not to my knowledge.

129 X Q. 721. Were there any kept there in the cupboard for any purpose?

A. No, sir; not that I know of.

X Q. 722. Did you have occasion to use pails in connection with the bar?

A. Yes, sir.

X Q. 723. For what purpose?

A. Carrying water and scrubbing out and dipping water.

X Q. 724. Did you use those pails in carrying the water out of the upper ice box?

A. Yes, sir.

X Q. 725. What was the thickness of the upper ice box?

A. I don't know; probably an inch.

X Q. 726. Was it filled in?

A. I guess not; but I couldn't say.

X Q. 727. How far was it from the foot of the stairs leading from the saloon to the cellar to the west end of the lower ice box?

A. Two or three steps.

X Q. 728. Then in going down-stairs when you got to the foot of the stairs you would only have to take two or three steps to come to the lower ice box, would you?

A. No, sir.

X Q. 729. And then the lower ice box of the wine cellar extended from there to the further end?

A. Yes, sir.

X Q. 730. Did it extend all the way to the east wall?
130 A. No, sir.
X Q. 731. There was a space between the east end of the wine cellar and the east wall?
A. Yes, sir.
X Q. 732. How often did you put ice in this upper ice box?
A. Two or three times a day.
X Q. 733. And before putting in ice you generally dipped out the water, did you?
A. Yes, sir.
X Q. 734. Did you wash out the ice box?
A. No, sir.
X Q. 735. Rub it out?
A. No, sir.
X Q. 736. Clean it in any way?
A. No, sir.
X Q. 737. And you don't know what became of the water from the melted ice in the lower ice box?
A. No, sir.
X Q. 738. Don't you know there was a sewer there to carry it away?
A. I never seen one there.
X Q. 739. Did the lower ice box have a floor to it?
A. Yes, sir.
X Q. 742. In what part of the lower ice box were these shelves?
A. On three sides; all but the front.
X Q. 743. How many shelves were they?
131 A. Three.
X Q. 744. One on each side?
A. Yes, sir.
X Q. 745. How far were these shelves from the bottom of the lower ice box?
A. About four or five feet.
X Q. 746. What was the width of those shelves?
A. Pretty near two feet, I should judge.
X Q. 747. And on those shelves rested the ice, you say?
A. Yes, sir.

Redirect examination by Mr. BENNETT, counsel for complainant:

Re-D. Q. 748. How old did you say you were?
A. Twenty-seven.
Re-D. Q. 749. And how old were you when you commenced shoemaking?
A. Twenty-one, pretty near.
Re-D. Q. 750. And how old were you when you entered the employ of Mr. Meinhard as a waiter boy?
A. Seventeen.
Re-D. Q. 751. Are you older or younger than your brother Albert?
A. I am older.

Re-D. Q. 752. While you were employed at Meinhard's as a waiter boy was your brother also employed there as a waiter boy?

A. He was working there part of the time then.

132 Re-D. Q. 753. Did you do anything at shoemaking while you were at Meinhard's?

A. No, sir.

Re-D Q. 754. Did you go direct from Mr. Meinhard's to learn your trade as a shoemaker?

A. I did.

Re-D. Q. 755. And when was it, according to your best recollection, that you commenced at your trade as shoemaker?

A. The very latter part of 1879.

Re-D. Q. 756. And was it for about nine months prior to that you had worked steadily for Meinhard as a bartender?

A. Yes, sir.

Re-D. Q. 757. During all this time did you tend bar in the saloon?

A. Yes, sir.

Re-D. Q. 758. You stated on your cross-examination that sometimes you tended bar in the hall.

A. Sunday evenings and once in awhile Sunday afternoon was the times I tended bar in the hall.

Re-D. Q. 760. And when the hall was open on Sundays the saloon was closed, was it not?

A. Yes, sir; that was in the evening.

Re-D. Q. 761. During about the nine months that you worked steadily for Meinhard as bartender did you tend bar at the hall other than Sunday nights?

A. No, sir.

133 Re-D. Q. 762. During the time you were employed steadily by Mr. Meinhard as a bartender were you mostly engaged in tending bar in the saloon?

A. No, sir; not mostly; in the evenings; during the day sometimes.

Re-D. Q. 763. Did any of the other bartenders besides yourself dip the water out of the upper ice box?

A. No, sir.

Re-D. Q. 764. Was there any other way to get the ice water out of the upper ice box?

A. No, sir.

Re-D. Q. 765. Where the beer-supply pipes entered the upper ice box was it fixed so that no water could leak out?

A. No, sir; there was no water could leak out.

Re-D. Q. 766. So long as you tended bar at Meinhard's did you see any water taken out of that upper ice box other than dipping it out?

A. No, sir.

Re-D. Q. 767. Was there any possible way in which the water could have been drawn from the upper ice box into the lower ice box?

A. No, sir.

Re-D. Q. 768. Was the bottom of the upper ice box water-tight?

A. Yes, sir.

Re-D. Q 769. You have spoken of a pair of stairs leading from the saloon to the cellar. Were those stairs used?

A. No, sir.

134 Re-D. Q. 770. Why not?

A. Because the ice box upstairs stood right over the trap-door, back of the bar, the large ice box.

Re-D. Q. 771. The large ice box marked on the model "B" stood over the trap?

A. Yes, sir.

Re-D. Q. 772. So you couldn't use that pair of steps?

A. Yes, sir.

Re-D. Q. 773. Does this door in the model "Complainant's Exhibit Model Meinhard Apparatus" represent the location of that trap-door?

A. Yes, sir.

Re-D. Q. 774. And the steps lead from the trap-door down into the cellar?

A. Yes, sir.

Re-D. Q. 775. Those steps not being used, how did you go into the cellar when you went into the lower ice box?

A. Around the back way.

Re-D. Q. 776. In going into the cellar for any purpose were the beer-supply pipes so exposed as to be readily seen?

A. Yes, sir.

Re-D. Q. 777. And was there ever any covering around these beer-supply pipes?

A. No, sir.

Re-D. Q. 778. Of what material was the outside surface of the beer-supply pipes?

A. Lead.

Re-D. Q. 779. And could you see the lead pipes plainly?

A. Yes, sir.

135 Re-D. Q. 780. When you were a waiter boy and used to go into the cellar to get kegs of beer out of the lower ice box for use in the hall or garden, how did you go into the cellar?

A. Went down the stairs that run between the hall and the saloon.

Re-D. Q. 781. That is another pair of steps?

A. That is the only pair to go down.

Re-D. Q. 782. When going into the cellar to get kegs of beer out of the lower ice box, could you and did you see these supply pipes?

A. Yes, sir.

Re-D. Q. 783. Were they always bare?

A. Yes, sir.

Re-D. Q. 784. Was there any drip of water into the lower ice box from the upper ice box or anywhere from the saloon?

A. No, sir.

Re-D. Q. 785. Whose business was it while you were saloon-keeper to put the ice on the shelves in the lower ice box?

A. The iceman.

Re-D. Q. 786. He brought the ice and put it on the shelves, did he?

A. Yes, sir.

Re-D. *X.* 787. Did each beer-supply pipe have in the lower ice box a rubber connecting the beer-supply pipe to the faucet?

A. Yes, sir.

Re-D. Q. 788. Did any rubber pipe or hose extend up and cover the beer-supply pipes from the lower ice box into the upper ice box?

136 A. No, sir.

Re-D. Q. 789. During the time you worked there, both as waiter boy and as barkeeper, did you ever know of those beer-supply pipes being covered or boxed in?

A. No, sir.

Re-D. Q. 790. Did you ever take measurements of the lower and upper ice boxes?

A. No, sir.

Re-D. Q. 791. You have been questioned in reference to the length, breadth, and height of the upper and lower ice box. Did you give that according to your best judgment?

A. Yes, sir.

Re-D. Q. 792. You never made any measurements, did you?

A. No, sir.

Re-D. Q. 293. Or as to the length of the pipes?

A. No, sir.

Re-D. Q. 794. You may state whether or not Mr. Gilbert was in the habit of staying around the saloon daily?

A. Yes, sir.

Re-D. Q. 795. Did he sometimes tend bar?

A. Yes, sir; the most of the time.

Re-D. Q. 796. Did you ever see Mr. Gilbert use this beer drawing and cooling apparatus?

A. Yes, sir.

Re-D. Q. 797. Did Mr. Gilbert use that beer-drawing apparatus during the time you were bartender in the saloon?

137 A. Yes, sir.

Re-D. Q. 798. Did you ever see Mr. Gilbert or Mr. Meinhard dip water out of the upper ice box?

A. No, sir; not that I remember of.

Re-D. Q. 799. That was usually your duty and the other barkeeper's?

A. Yes, sir.

Re-D. Q. 800. Mr. Gilbert is still living, is he?

A. Yes, sir.

Re-D. Q. 801. Here in the city of Rochester?

A. Yes, sir.

Re-D. Q. 802. Referring now to the delivery of the beer, is it all first slid into the cellar?

A. Yes, sir.

Re-D. —. 803. And what was done with it then?

A. The man came down cellar and rolled it into the ice box.

Re-D. Q. 804. Why did they put it in the ice box?

A. To keep it cool.

Re-D. Q. 805. Then when you wanted beer in the garden or hall where did you get it?

A. From the ice box below.

Re-D. —. 806. You went down and took out one of the kegs that was left there to cool?

A. Yes, sir.

Re-D. Q. 807. Did you draw direct from the wood in the concert hall?

A. Yes, sir.

Re-D. Q. 808. I think you said there was an air pump used for forcing the beer from the cellar up into the saloon?

138 A. Yes, sir.

Re-D. Q. 809. When you were bartender where did they keep the key to the wine cellar?

A. Back of the bar, on a board.

Re-D. Q. 810. Whose duty was it to go into the wine cellar to get the wine when it was needed?

A. I used to do that the first thing in the morning, and if we run out would do it through the day, or any one that was around there.

Re-D. Q. 811. In the morning you would go down and get what you thought sufficient for the day?

A. Yes, sir.

Re-D. Q. 812. And if you run out would you go down again?

A. Yes, sir.

Re-D. Q. 813. Every time you went into the wine cellar did you pass these beer-supply pipes?

A. Yes, sir.

Re-D. Q. 814. And could you plainly see them?

A. Yes, sir.

Re-D. Q. 815. You may state whether or not on all occasions you saw these pipes they were covered or bare.

A. They were bare.

Re-D. Q. 816. Have you been in Meinhard's employ since leaving there, in the fall or winter of 1879?

A. No, sir.

Re-D. Q. 817. At that time you ceased having any connection with the beer trade, did you?

A. Yes, sir.

139 Re-D. Q. 818. Does the model "Complainant's Exhibit Model Meinhard Apparatus" show clearly the location and arrangement of the upper and lower ice box?

A. Yes, sir; it does.

Re-D. Q. 819. Did you have to clean the beer-supply pipes?

A. Yes, sir.

Re-D. Q. 820. How often did you clean them?

A. Once a week.

Re-D. Q. 821. Describe to us precisely what you did in cleaning these pipes and how you did it.

A. Usually took a beer barrel and filled it full of water and soda and got it back of the bar and put a hose on it and fastened one end of the hose onto these faucets and forced it through down into the ice box below.

Re-D. Q. 822. Then you were cleaning out the inside of the beer-supply pipes with soda water, were you?

A. Yes, sir.

Re-D. Q. 823. And you force this soda water into and through the beer-supply pipes by the pressure of the air pump?

A. Yes, sir.

Re-D. Q. 824. And did this soda water pass through the beer-supply pipes and down into the lower ice box?

A. Yes, sir.

Re-D. Q. 825. And what became of it after it got into the lower ice box?

140 A. Went onto the floor?

Re-D. Q. 826. In cleaning out the inside of the beer-supply pipes did you disconnect the rubber connection to the beer-supply pipe?

A. No, sir.

Re-D. Q. 827. Did you, however, discontinue the opposite end of the rubber connection——

Defendants' counsel objected.

Question withdrawn.

Re-D. Q. 828. You may state how it was that this soda water after being forced through the beer-supply pipes was permitted to run into the lower ice box.

A. Turn off that coupling upon the beer faucet—off the beer barrel.

Re-D. Q. 829. I suppose you cleaned the interior of the pipes to keep them fresh?

A. Yes, sir.

Re-D. Q. 830. So as not to sour the beer?

A. Yes, sir.

Re-D. Q. 831. And this you did every week, did you?

A. Yes, sir.

Re-D. Q. 832. Would you before forcing the *the* soda water through go down into the lower ice box and disconnect the rubber connection from the beer faucets?

A. Yes, sir.

Re-D. Q. 833. Were you ever troubled with any leaking from the upper ice box into the closet underneath?

141 A. No, sir.

Re-D. Q. 834. Am I correct in understanding you to have testified that that closet underneath the upper ice box was about two feet in height?

A. Which one?

Re-D. Q. 835. The closet underneath the upper ice box?

A. Yes, sir.

Re-D. Q. 836. Have you any interest in this lawsuit?

A. No, sir.

Re-D. Q. 837. Are you in any way connected with Mr. Magin?

A. No, sir.

Re-D. Q. 838. Or have you any connection with Mr. Gordon?

A. No, sir.

Re-D. Q. 839. Referring to the time you gave your affidavit in the cases of Magin against McKay and against Welker, do you remember shortly after giving your affidavit being called upon by your brother, who talked with you about your affidavit?

A. I remember of his saying something, but I don't know what it was.

Re-D. Q. 840. He came down to see you about it, did he?

A. Yes, sir.

Re-D. Q. 841. What did he ask you to do?

A. I don't remember.

Re-D. Q. 842. Did Mr. Meinhard call to see you?

142 A. No, sir; he didn't come to call to see me. He came to the house.

Re-D. Q. 843. He came to the house, did he?

A. Yes, sir.

Re-D. Q. 844. How long was this after you gave that affidavit?

A. Probably a week or so.

Re-D. Q. 845. Did he come more than once?

A. He came there once; twice.

Re-D. Q. 846. Did he ask for you?

A. Yes, sir.

Re-D. Q. 847. Did he leave word what he wanted of you?

A. He did not.

Re-D. Q. 848. What did your brother say about your having and giving an affidavit to Magin?

A. All that I can remember is that he said he beat once and would beat again. That is all I can remember.

Re-D. Q. 849. Who said that?

A. My brother.

Re-D. Q. 850. Did he tell you Meinhard had told you that?

A. Yes, sir; if I remember right, he said that at home to my folks, too.

Re-D. Q. 851. Who said it to your folks?

A. Meinhard.

Re-D. Q. 852. He talked to your folks about this matter, did he?

A. Yes, sir; talked to my mother.

143 Re-D. Q. 853. Do you remember, after your brother talked with you and after Meinhard was at your house, making an affidavit for Mr. Magin in which you stated what they had said to you?

—. No, sir; I do not.

Re-D. Q. 854. Has Mr. Meinhard been to your house or been to see you since that time?

A. Not that I know of.

Defendants' counsel states that he objects to the complainants'

counsel speaking with the witness Stief while in course of his examination. Complainant's counsel states that if defendants' counsel wanted to tell the truth he could have done so by saying that the witness had left the stand, having closed his deposition, as is the fact. Defendants' counsel states that complainant's counsel before talking to the witness stated that he was to recall the witness, and before recalling him he was engaged in a conversation with him and is at present engaged.

Mr. BENNETT: Which is a lie.

Complainant's counsel states that he intends recalling the witness to identify his two affidavits and has handed them to him to read and the witness is reading them, and that it seems impossible for the defendants' counsel to tell the truth for eighteen seconds.

Defendants' counsel reminds the complainant's counsel that he is now in a court of justice and he must endeavor to observe
144 the proprieties in a court and not use abusive language such as he has indulged in here; that it is very unbecoming, and that it is something that attorneys in Rochester are not in the habit of hearing during the progress of a trial in court and very seldom on other occasions.

Complainant's counsel says that his experience of Rochester attorneys, with one exception, is that they adhere to the truth.

RAYMOND STIEF, recalled and resworn, in answer to interrogatories propounded to him by the counsel for the complainant, Mr. BENNETT, testified as follows:

Re-D. Q. 855. Mr. Stief, did you make two affidavits in the case of Magin against McKay and against Welker?

A. I did.

Re-D. Q. 856. Have you read these documents that I now hand you, purporting to be copies of your two affidavits made in the cases of Magin against McKay and against Welker; and, if so, are they not correct copies of your affidavit?

A. Yes, sir.

The copies of the two affidavits referred to are offered in evidence and marked Complainant's Exhibit Stief's Affidavit of October 8th, 1885, and Complainant's Exhibit Stief's Affidavit of October 27, 1885.

Defendants' counsel objected to the affidavits as immaterial and incompetent.

Mr. BENNETT: You make no objection to the copies, do you, with the understanding that the examiner will compare them as with the others?

145 Mr. SULLIVAN: I do not object to them upon the ground that they are copies, but upon the ground that they are incompetent and immaterial.

Recross-examination by Mr. SULLIVAN, counsel for the defendants:

Re-X Q. 857. Have you left the room since you were cross-examined by me?

A. No, sir.

Re-X Q. 858. Have you left the room since we commenced your examination this afternoon?

A. No, sir.

Re-X Q. 859. Before you were recalled by Mr. Bennett did he call your attention to an affidavit which you made in the cases of Magin against Welker and McKay?

Complainant's counsel states that the witness was recalled for the purpose of identifying the two affidavits which he made in the cases of Magin against McKay and Magin against Welker, and the witness, not having read those affidavits, was handed the copies offered in evidence with instructions to read the same, that he might testify in regard to them.

Re-X Q. 860. While you were engaged in reading those affidavits did Mr. Bennett explain them to you?

A. No, sir.

Re-X Q. 861. What did he say to you about them?

A. Only showed me where they were and told me to read them over.

Re-X Q. 862. How long did that occupy?

146 A. Probably four or five minutes.

Re-X Q. 863. And how long a time elapsed from the time you left the stand until you were recalled again?

A. Probably six or seven minutes.

(Signed) RAYMOND STIEF.

It was stipulated that the examiner might sign the testimony with the names of the respective witnesses.

JOHN H. LEHMAN, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John H. Lehman; place of business, 253 North Clinton street; occupation, restaurant—saloon; age, thirty-eight.

Q. 2. You are a saloon-keeper, aren't you?

A. Yes, sir; you might call it that way.

Q. 3. Are you one of the defendants in these cases?

A. Yes, sir.

Q. Are you a member of the Saloon-Keepers' Protection Association of the City of Rochester?

A. Yes, sir.

Q. 5. How long have you been a member of that association?

A. About eight months.

Q. 6. When was that association formed?

A. Some time in the month of April, I think.

147 Q. 7. Wasn't it formed after the filing of the bill of complaint against you for infringement of the Gordon patent?

A. Yes, sir; I think so.

Q. 8. For what purpose was that association formed?

Defendants' counsel objected to the question. Objection withdrawn.

A. For the mutual protection, as other societies are or other associations are formed.

Q. 9. Wasn't it formed to fight the Gordon patent that is involved in these cases?

A. Not absolutely; no, sir.

Q. 10. Don't you know that it was formed shortly after, and that its formation grew out of, the fact of the filing of the bill of complaint against you and Karle?

A. It might help towards it.

Q. 12. Didn't that cause it?

A. I couldn't say that was the only cause.

Q. 13. That was one of the causes, wasn't it?

A. It might be.

Q. 14. Don't you know that was one of the causes?

A. It might have been; it is one of the causes; yes, sir; it is one of the causes.

Q. 15. Wasn't the meeting for the formation of the Saloon-Keepers' Protection Association called shortly after you received notice of the filing of this bill of complaint against you?

A. Yes, sir.

148 Q. 16. You are treasurer of this asoociation aren't you?

A. Yes, sir.

Q. 17. And this association is conducting the defense to these two cases, isn't it?

A. Yes, sir; so far.

Q. 18. The association employs Mr. Sullivan, doesn't it?

A. Yes, sir.

Q. 19. And pays him?

A. I suppose so.

Q. 20. How many members are there of the association?

A. I don't know.

Q. 21. From how many different parties have you received contributions as treasurer?

A. I received mine from one.

Q. 22. Who else have you received contributions from?

A. As treasurer?

Q. 23. Yes, sir.

A. I received it from the secretary.

Q. 24. You receive all the contributions from the secretary, do you?

A. Yes, sir.

Q. 25. He keeps the books, does he?

A. Yes, sir.

Q. 26. Are you still treasurer?
A. Yes, sir.
Q. 27. Have you got the treasury account with you?
149 A. Yes, sir.
Q. 28. Will you produce it?
A. I have got a bank book with me; that is all.
Q. 29. Have you no book with you showing the amounts received and from whom?
A. No, sir.
Q. 30. Who keeps that account?
A. The secretary, I suppose.
Q. 31. The association has a finance committee, hasn't it?
A. Yes, sir.
Q. 32. And that finance committee conducts the defense of this litigation, doesn't it?
A. I don't know.
Q. 33. Don't you know that your by-laws provide that the finance committee shall take charge of and conduct the litigation on behalf of the association?
A. I haven't read the by-laws for a long time.
Q. 34. You know your association has by-laws?
A. I suppose so.
Q. 35. Examine this book I show you and see if that is a copy of the organization and by-laws of your association.
A. Yes, sir; it looks like it.

The same is offered in evidence and marked Complainant's Exhibit Saloon-Keepers' Protective Association of the City of Rochester.

Q. 36. Who is the secretary of your association?
150 A. George J. Weider.
Q. 37. Are the different parties whose names appear on the page headed "officers" members of your association?
A. Some of them are.
Q. 38. Point out any that are not.
A. I could not.
Q. 39. Aren't they all members?
A. There is one I can tell that is not.
Q. 40. Who is it?
A. Van Slyke, I think.
Q. 41. The others all are members of the association, are they?
A. I wouldn't say they all were, but I could point out one that is not.
Q. 42. You can't point any more that are not, can you?
A. No, sir; not for sure. I don't know how many members there are.
Q. 43. How much money, as treasurer, have you received from the financial secretary?
A. I don't know exactly.
Q. 44. Refer to your bank book and let us have the gross sum.
A. $541.00.

Q. 45. Each member of the association contributes a certain amount to the common fund, doesn't he?

Defendants' counsel objects to the question upon the ground that the constitution itself is the best evidence.

151 Q. 46. Does each member of the association contribute a certain amount as the assessments are levied by the association?

A. We have no assessment.

Q. 47. How, then, do the members contribute?

A. They pay so much initiation and so much a quarter.

Q. 48. And out of the moneys so received from the members the expenses of this litigation are paid?

A. I don't know; have paid some, but whether all paid I don't know.

Q. 49. As treasurer, you have paid the different bills incurred by this association in conducting the defense of these cases, haven't you?

A. Have paid all the bills I have had any order for.

Q. 50. And the money has been taken out of that received as initiation fees and dues from the members?

A. The money I have paid out; yes, sir.

JOHN H. LEHMAN.

LEWIS C. MUNCIE, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation.

A. My name is Lewis C. Muncie; I am tending bar at present; occupation is shoemaker, my trade; age, twenty-four years; residence, 210 North Clinton street.

Q. 2. For whom are you tending bar at the present time?

152 A. Visner & Buckley, 192 State street.

Q. 3. Are you the recording secretary of the Saloon-Keepers' Protective Association of the City of Rochester?

A. No, sir.

Q. 4. You were recording secretary, weren't you?

A. Yes, sir; I was.

Q. 5. When did you resign?

A. I couldn't say just what time I resigned. It must be five or six months ago.

Q. 6. Who is the recording secretary at the present time?

A. I don't know for sure.

Q. 7. As recording secretary, did you keep a list of the members of the association?

A. Yes, sir; at one time.

Q. 8. What did you do with the list and other papers belonging to your office of recording secretary when you resigned?

A. I turned them over to the association.

Q. 9. At the time you resigned how many members had the association?

A. I couldn't say positively.

Q. 10. About how many?

A. I think there was twenty-five or somewhere around there.

Q. 11. Give me the names of such of them as you remember.

153 A. There was James McKay and Visner & Buckley and myself and George Weider and Mr. Lehman is all I can remember. There are a great many that I was not acquainted with. Those were personal friends of mine, and I am acquainted with them.

Q. 12. Do you know haw many members they have at the present time?

A. No, sir.

Q. 13. Wasn't John Karle a member?

A. I think he was. I think the name is familiar.

Q. 14. Was John Meinhard a member?

A. Not as I know of.

LEWIS C. MUNCIE.

GEORGE J. WEIDER, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is George J. Weider; residence, 43 Grand street; age, twenty-four; occupation, grocery and saloon or whatever you might call it.

Q. 2. Are you a member of the Saloon-Keepers' Protective Association of the City of Rochester?

A. Yes, sir.

Q. 3. What office do you hold?

A. Financial secretary.

Q. 4. What are the duties of the financial secretary?

A. To keep all correct accounts and receipts and orders drawn.

Q. 5. Have you with you a list of the members of the association?

154 A. Yes, sir.

Q. 6. Please produce it.

(Produced by the witness.)

Q. 7. Does this book which you have produced contain a correct list of the members of the association?

Defendants' counsel objected to the question.

A. Not quite all of them; they are not all put down. For the last two or three meetings we didn't put them down.

Q. 8. Have you a list of those members?

A. No, sir; but I can mention mostly all.

Q. 9. Give me the names of the members of your association who are not on the book.

A. Fred. Imhof, L. Gilligan, Fred. Forest, and Joe Agram.

Q. 10. The parties named in your last answer, together with those whose names are recorded in this book——

A. You mean all that are members? Agram is not a member yet, but he will be.

Q. 11. The parties named in your last answer, together with those whose names are recorded in this book, compose the entire and correct membership of your association, does it?

A. Yes, sir; I think so. There are a few more that I can't think of—names that are not on this list and are not familiar to me.

Q. 12. Is Valentine Gilliard a member?

A. No, sir; he is not a member.

Q. 13. As financial secretary did you receive the payments of the initiation fees and dues?

155 A. Yes, sir; and turned them over to the treasurer, what my duties are.

Q. 14. Is your association conducting the defense on behalf of Lehman and Karle in the cases brought against them by Michael Magin?

A. Do you mean defending the case for Lehman and Karle?

Q. 15. Yes.

Defendants' counsel objected to the question on the ground that the constitution provides what it is organized for.

A. It conducts it as far as their constitution reads. It is to protect every member that belongs to the association, and very likely, if the constitution reads that, it must be so.

Q. 16. Don't you know that it is a fact that the association is defending Karle and Lehman in the case brought against them by Michael Magin for the infringement of the Gordon patent?

A. Yes, sir; as far as I understand. That is what the association is there for, I believe, for protection.

Q. 17. So far as you know, was not the association formed for the purpose of contesting the Gordon patent for a beer cooling and drawing apparatus?

A. Well, sir, if I should give the honest opinion about it, it was formed to protect all saloon-keepers in the city of Rochester and forming an organization and protecting them in one case and another, and wasn't alone on this Lehman and Karle case, but other things they had in view to attend to and did, and that was as far as I understood it. They speak of it time and time again,

156 and I never knew, being a young beginner, and never knew anything about the Gordon or Lehman or Magin case, and never knew anything about the other suits and hadn't anything to do with them, and don't know whether it was for that purpose or not.

Q. 18. Does each member of your association pay an initiation fee?

A. Yes, sir.

Q. 19. Does your association make quarterly assessments?

A. Yes, sir; a dollar every quarter.

Q. 20. And each member pays a dollar every three months?

A. Yes, sir.

Q. 21. And it is out of this fund contributed by the members that the defense of the Karle and Lehman cases are paid?

A. Yes, sir. It is not Lehman and Karle alone, but there are others defending one member and another in any case where there is a necessity.

Q. 22. Examine the book, "Complainant's Exhibit Saloon-Keepers' Association of the City of Rochester," and state whether that is a copy of your organization and by-laws.

A. It is; yes, sir.

Complainant's counsel offered in evidence the book produced by witness for the purpose of showing the list of members of the Saloon-Keepers' Protective Association of the City of Rochester.

Defendants' counsel objected to the book upon the ground that it is not properly proven.

157 Q. 23. Did you keep this book yourself?

A. Yes, sir.

Q. 24. It is your handwriting?

A. Yes, sir.

Q. 25. You know the list of members recorded in this book to be correct, don't you?

A. Yes, sir; all that there are there.

It is stipulated that the examiner shall take a copy of the list of members of the said Saloon-Keepers' Protective Association of the City of Rochester from the book produced, and that said copy shall be treated with the same force and effect as the book itself.

Defendants' counsel objected to the introduction of the book on the further ground that now it appears that the signatures in that book are in the handwriting of the witness and not in the handwriting of the parties whose names appear therein, and the constitution of such Saloon-Keepers' Association expressly provides that in order to become a member of such association they shall sign the book of membership.

Q. 26. Is there another list of members?

A. No, sir.

Q. 27. As a matter of fact, has the practice been followed of each member signing the by-laws?

A. No, sir. Some hadn't just got there, and some sent up their dues and balloted for and elected, and some hadn't been there yet.

158 Cross-examination by Mr. SULLIVAN, counsel for the defendants:

X Q. 28. This is the only——

A. The only full list of members that we have got at the present time.

X Q. 29. Aren't there some names appearing in this book that are not members of the association?

A. There may be in the time of the expiration of the law and by-laws that are made, and there will be most likely and only three or four if there is, and I don't know if there will be any after they get their notice.

X Q. 30. Has it been your custom to enter on this book any

names that are brought in by any member of the organization and send them notice that his name has been proposed?

A. No, sir; that is the corresponding secretary's duty and not mine.

X Q. 31. What you do, then, generally is to put the name down on this book and that is all you have to do?

A. All I have to do is to look after the dues.

X Q. 32. Are there many persons whose names appear in this book who have not paid their dues?

A. There is not many. As I say, there may be three or four, the time expiring that there will be those cancelled.

X Q. 33. Are all these names in your handwriting?

A. Yes, sir.

159 X Q. 34. And this is the only book kept in which the names of the supposed members appear?

A. Yes, sir; that is the only book of a full list of the members.

X Q. 35. There is no copy of the constitution attached to this book, is there?

A. No, sir; that is the corresponding secretary. He may have a list of the members, but I don't know. He ought to have.

X Q. 36. You think the list of members of the recording secretary is more accurate than yours?

A. I don't know really whether it is or not. Most likely it is, because he has been sickly lately, for the last three or four months, and hasn't attended any meetings.

X Q. 37. Your duty in connection with the membership is simply to enter it on this book when the name is mentio ned to you and then the recording secretary gives the notice?

A. Yes, sir.

X Q. 38. Do you know how many members there are whose names appear on this book?

A. No, sir; there are a few who are not on that book.

X Q. 39. Who has the names of those few that don't appear on this boook?

A. The corresponding secretary.

X Q. 40. Do you know Mr. John Meinhard?

A. I know him by sight, but don't know him personally.

X Q. 41. Did you ever see him at any of your meetings?

160 A. Not that I know of, or at any meeting I attended. There are some meetings I didn't attend.

X Q. 42. At any meeting that you ever attended did you ever see Meinhard there?

A. No, sir.

X Q. 43. Do you know that Mr. Meinhard is a member of this association?

A. He is to be if he will stay there.

X Q. 44. He is to be if he will become a member?

A. Yes, sir.

X Q. 45. He has been invited?

A. Yes, sir.

X Q. 46. But he has never attended any meeting?

A. No, sir; never has. I couldn't say, but what meetings I have been there, but he has never paid any initiation.

X Q. 47. And he has never paid any assessment?

A. No, sir; his name was proposed to me and I put it on the list.

Redirect examination by Mr. BENNETT, counsel for complainant:

Re-D. Q. 48. Who furnishes you with a list of members as they are admitted?

A. Each member—whatever member brings them in. I may bring in two or three and another member bring in one or two or three.

Re-D. Q. 49. Who is the recording secretary?

161 A. His name is Burr.

Re-D. Q. 50. Can you give his full name?

A. I think it is George Burr.

Re-D. Q. 51. What books of the association does he keep?

A. As far as I know he keeps the correspondence, the minutes. That is all the books he has, to my knowledge.

Re-D. Q. 52. He keeps the original by-laws, does he?

A. I believe he does. It is at least in the minutes, I think.

Re-D. Q. 53. Are there any parties whose names are not included in this list who have contributed?

A. Yes, sir; just those I have mentioned, the last few, with the exception of Agram's. The rest are parties that have contributed money, paid their initiation and dues.

Re-D. Q. 54. Have any of the brewers contributed?

A. No, sir; not that I know of.

Re-D. Q. 55. Any of them agreed to?

A. No, sir; not that I know of. Our plan is, that we are fighting on now, is the brewers and liquor dealers.

Re-D. Q. 56. Have any of the plumbers contributed?

A. No, sir; there never has been a dollar contributed outside of the membership with the names that are down there.

162 Recross-examination by Mr. SULLIVAN, counsel for the defendants:

Re-X Q. 57. You said your association was now engaged in a contest with the brewers. Describe the nature of that contest.

A. It is on the beer question; to get a reduction on the beer and as we succeeded, and the different things they mentioned and brought up argument at every meeting for the benefit of the saloon-keepers.

Re-X Q. 58. Does your association also take a little interest in politics?

Objected to as lumbering the record with absurdities.

A. To a limited extent; yes, sir.

Re-X Q. 59. Have they recently taken action in reference to certain candidates for office?

A. Yes, sir; they have this last election and intend to hereafter

to any office that they have any power to act on or to have any chance to bind the body and get them together for their benefit.

Re-X Q. 60. Do they also assume the defense of any party against whom a charge is made for violating the excise laws of the State?

A. Yes, sir.

Re-X Q. 61. Have they defended members against whom such a charge was made?

A. Yes, sir; there was one member that we defended, and I was on one of the committees, where the case came up here in the city, and we defended him and paid his expenses.

163 Re-X Q. 62. Has your association secured rooms in the city?

A. Yes, sir.

Re-X Q. 63. And hold your regular meetings?

A. Yes, sir.

Re-X Q. 64. And at those meetings are all matters pertaining to the success and welfare of the association discussed?

A. Yes, sir; and sometimes a special meeting called if any specially comes up—special meeting called.

Re-X Q. 65. Have you had occasion to call special meetings recently?

A. Yes, sir.

Re-X Q. 66. For what purpose?

A. For the purpose—the last question was this police commissioner question and closing on Sundays was the last one we had, and had two meetings or three meetings inside of two weeks.

Re-X Q. 67. For what purpose?

A. For the purpose of organizing together and getting our committee to wait upon different parties in regard to closing and one thing and another.

Re-X Q. 68. Closing on Sundays?

A. Yes, sir.

Complainant's counsel says that he has patiently endured the absurb cross-examination of this witness, which seems to be simply for the purpose of magnifying the importance of defendants' counsel in connection with this association and to show that it

164 possibly possesses some power that he may parade before the public, and it is an outrage that such cross-examination should continue, especially at the expense of the complainant.

Re-X Q. 69. Has there recently been a movement in this city in reference to closing saloons on Sunday?

A. Yes, sir; I believe there has—three or four weeks ago, when Commissioner Rosenthal threatened to do so or authorized the chief of police to do so, and we had a special meeting called and they all attended—in the neighborhood of 110 or 111, I think it was and I don't know which—and appointed committees to wait upon members.

Re-X Q. 70. Who paid the expenses of defending this member against whom a charge was made for violating the Sunday law?

A. The Saloon-Keepers' Protective Association.

Re-X Q. 71. Then, as I understand you, your custom has been when a name of a saloon-keeper is mentioned as a person who would be likely to become a member of your association you have put that name down on this list?

A. We ballot for him according to our constitution and he is to become a member, whether he can or not. If the members don't see fit to accept him he can't become a member.

Re-X Q. 72. When your association was first organized isn't it a fact that all names were put down on this book whom the persons present thought would become members of this association at the first meeting?

165 A. Yes, sir; there were members that came up there and wished to sign and all right.

Re-X Q. 73. And a great many others whose names were handed in there were entered on the book at the time, were they?

A. Yes, sir; a great many names.

Re-X Q. 74. Without the parties themselves being present?

A. Yes, sir.

Re-X Q. 75. Have you any means of telling which of those parties whose names appear on that book have paid their regular initiation fee?

A. Yes, sir.

Re-X Q 76. Where is that book?

A. That is here. That is all on there, those that have paid and those that have not. Those that have not paid are not credited with it.

Re-X Q. 78. Have you any means aside from what appears on this book of telling what members have paid their initiation fee?

A. No, sir; that is all the book I have.

Re-X Q. 79. Do you give a member a receipt when they pay the-r initiation fee?

A. Yes, sir.

Re-X Q. 80. Have you a list of those receipts?

A. Yes, sir.

Re-X Q. 81. Where is that list?

A. It is a regular receipt book.

Re-X Q. 82. Where is that receipt book?

A. I have got it home.

Re-X Q. 83. You didn't bring it with you?

166 A. No, sir; because it is not necessary, because I have got all those that have paid in the book and charged for there and credited. Those that haven't paid are not credited.

Re-X Q 84. Will your receipt book show the names of all members who have paid their initiation fee?

A. Pretty near; within probably a few that might have been skipped, that I didn't give a receipt to, like myself.

Re-X Q. 85. You intended that your receipt book should contain the names of all those members, didn't you?

A. Yes, sir; most of it.

Redirect examination by Mr. BENNETT, counsel for complainant:

Re-D. Q. 86. Who is the attorney of this association?

A. Mr. Sullivan is one, and we have had Mr. Ernst and Mr. Werner or Hetzel, I think it is.

Re-D. Q. 87. Who has paid Mr. Sullivan for his services in conducting the defense in these cases?

A. There has an order been drawn from the treasurer.

Re-D. Q. 88. It has been paid out of the treasury of this association, hasn't it?

A. Yes, sir.

Recross-examination by Mr. SULLIVAN, counsel for the defendants:

Re-X Q. 89. Has Mr. Hetzel and Mr. Ernst been paid in the same way?

A. Yes, sir.

167 The witness is requested by defendants' counsel at the next hearing to produce the book showing the names of the parties who have paid their initiation fee in becoming members of this association.

Re-X Q. 90. All parties whose names appear in this book who have paid their initiation fee, has it been passed to their credit?

A. Yes, sir.

Re-X Q. 91. And those whose names appear in this book not credited with the initiation fee, have they become members of your association?

A. Well, they are elected to become members, but if they don't pay their initiation fee they won't be members.

Re-X Q. 92. And when their initiation fee is paid you at once pass that amount to their credit, do you?

A. Yes, sir.

Re-X Q. 93. Please turn to page 56 and state what appears thereon.

A. John Meinhard, North Clinton street, not paid any initiation nor any dues, and there is Frank Mutschler, another, and Mura and Knipper is another.

Re-X Q. 94. Are there also many other names which appear herein who have not paid their initiation fee and have not become members of this association?

A. Yes, sir; as I say, there are three or four or five.

Re-X Q. 95. Look through the book and state how many there are, giving the page on which their names appear.

168 A. William Altman, page 3; H. Bronson, page 9, and John Bartleman, page 8; Duffy Bros., page 18; E. S. Hodges, page 21; E. Hibbard, 31; Bernhard Fegne, Frank X. Feary, 36; L. Feely, 38; William Krieg, 41; H. C. Farquahar, 42; John Cline, 43; James Leonard, 54; John Meinhard, 56; Frank Mutschler, 57; Mura

& Knipper, 58; H. P. Reisky, 65; Julius Schmidt, 71; John Shanahan, 72; William Updike, 83; John Sellers, 89; Charles A. Young, 90. The rest are all paid.

Re-X Q. 96. Are those the names which appear on your book and are not members of your association?

A. Yes, sir; they are not members, not until they pay their initiation fee, and then they become members.

Re-X Q. 97. Your custom is when a name is proposed to act upon it, and if a member is accepted you then write his name down in that book, do you?

A. Yes, sir—that is, at times—but in the start there was a list of the members, a month ago.

Re-X Q. 98. After that was done the recording secretary gave them notice of their election?

A. Yes, sir.

Re-X Q. 99. And when they come in and pay their initiation fee you then credit it below their names?

A. Yes, sir.

GEO. J. WEIDER.

Adjourned until Monday, December 19th, at 11 o'clock a. m., it being stipulated that the complainant's time for taking rebutting proofs be, and the same is hereby, extended until the 25th day of December.

169 DECEMBER 19TH—11 o'clock a. m.

Parties appeared as before and proceedings adjourned by consent to December 20th, 11 o'clock a. m., at the same time and place.

DECEMBER 20TH—11 o'clock a. m.

Parties appeared as before.

OTTO HAHN, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is Otto Hahn; 15 Charles place, Chicago, Ill.; age, 26; occupation, janitor.

Q. 2. How long have you resided in Chicago?

A. Since August, 1881.

Q. 3. Where did you reside before going to Chicago?

A. In Rochester, N. Y.

Q. 4. What was your business at Rochester, New York?

A. I had two businesses; worked at shoemaking and tended bar besides, Sundays and evenings.

Q. 5. For whom did you tend bar Sundays and evenings?

A. For John Meinhard.

Q. 6. Where was Mr. Meinhard's place?

A. On St. Paul street near the railroad bridge, known as Falls Field.

Q. 7. When did you commence tending bar for John Meinhard?

170 A. About 1877.

Q. 8. How long did you continue tending bar for him?

A. About four years, off and on, until I went to Chicago.

Q. 9. What were your duties while you were employed by Mr. Meinhard?

A. Bartender.

Q. 10. State fully what you did as bartender for Meinhard.

A. I was in the bar and got the beer from the cellar and tapped the beer and put the beer on the counter for the waiters.

Q. 11. At what bar were you located?

A. I was mostly in the hall bar; sometimes in the saloon bar.

Q. 12. Did you at times tend bar in the saloon proper?

A. Yes, sir.

Q. 13. You say it was a part of your duties to bring the beer up and put it in the bar. Where did you get the beer from?

A. From the ice box in the cellar.

Q. 14. Was there an ice box in the cellar; and, if so, in what portion of the cellar was it located?

A. There was; it was near the southwest corner.

Q. 15. During the time you worked for Meinhard, from 1877 to 1881, did he have in the saloon bar a beer drawing and cooling apparatus?

A. Yes, sir.

171 Q. 16. Where was that beer-drawing apparatus located?

A. Right behind the bar.

Q. 17. You may describe the construction and arrangement of Meinhard's beer drawing and cooling apparatus.

A. It was a square ice box, with four faucets running from it and coils of pipe in the box from each faucet, and the pipe ran straight from the ice box through the floor into the cellar and into the wine cellar and inside of the lower ice box.

Q. 18. State whether the upper ice cooler was directly over the lower ice box or not.

A. It was not.

Q. 19. You may state whether or not the coils of the pipe running from each faucet were located in the bottom of the upper ice cooler.

A. Yes, sir.

Q. 20. How many different coils of pipe were in the bottom of the upper ice cooler?

A. Four different coils. I don't know as I understand you. There were four different coils—four separate coils.

Q. 21. Did you have anything to do with the tapping of the kegs of beer from which the beer was drawn by this beer-drawing apparatus?

A. Yes, sir; I have tapped it several times.

Q. 22. How often during the time you worked for Meinhard did your duties call you into this lower ice box?

A. I have been down there, I guess, about 150 or 200 times.

172 Q. 23. Whenever you required beer for your bar did you or not have to go to the lower ice box to get it?

A. Yes, sir.

Q. 24. Who was the bartender for Meinhard in his saloon during the greater portion of the time that you worked there?

A. Mr. Schantz was bartender there the greater portion of the time.

Q. 25. You may state whether or not you used this beer-drawing apparatus of Meinhard's at different times.

A. Yes, sir.

Q. 26. Did you or not ever put ice in this upper beer-cooler?

A. No, sir.

Q. 27. Who did put the ice in the upper beer-cooler?

A. Mr. Schantz.

Q. 28. Do you know how the meltings from the ice—that is, the ice water—was gotten out of the upper ice cooler?

A. Yes, sir; it was dipped out.

Q. 29. Who attended to the dipping of the ice water out of the upper ice box?

A. Mr. Schantz.

Q. 30. State whether or not you ever saw Schantz dip the ice — out of the upper ice box.

A. Yes, sir; several times.

Q. 31. Did you ever have any conversation with Schantz about the dipping out of the ice water from the upper ice box?

173 A. Yes, sir.

Q. 32. State precisely what conversation you had with Mr. Schantz on that subject.

A. I went in there generally every morning and have noticed him dipping out this water and have asked him, "What is the matter? Is that stopped up and won't run off?" and he says, "There is no run-off to it and no place for it to run off," and had to dip it out.

Q. 33. And during all the time you worked for Meinhard did you frequently see them dipping the water out of the upper ice box?

A. Yes, sir.

Q. 34. Was there any way, so far as you know, for getting the ice water out of this upper ice box other than dipping it out?

A. No, sir.

Q. 35. How many kegs of beer did they usually keep tapped in the lower ice box in connection with this beer-drawing apparatus?

A. Generally had two or three.

Q. 36. You may state how the beer kegs in the lower cellar were connected to the beer-supply pipes leading up from this beer-drawing apparatus.

A. The coils run down, and they were attached by a hose about a yard or a yard and a half long, and that was attached to the faucet.

Q. 57. State whether or not there was a rubber hose fastened onto the end of each beer-supply pipe in the lower ice box.

A. No, sir.

174 Q. 38. How many beer-supply pipes came down into the lower ice box?

A. Four.

Q. 39. And were each of these beer-supply pipes so fixed that they could be attached to the faucet of a keg of beer?

A. Yes, sir; they were fixed so they could be attached.

Q. 40. How was each beer-supply pipe in the lower ice box fixed so it could be attached to the keg?

A. Had kind of a nozzle on it, same as they have with hose and turned on in that way, turned on this nozzle.

Q. 41. Was there a piece of rubber hose about a yard or a yard and a half long to the end of each beer-supply pipe in the lower ice box?

A. Yes, sir; they went to the faucet.

Q. 42. As the beer-supply pipes came through the floor and into the cellar could they be plainly seen in the cellar?

A. Yes, sir.

Q. 43. You may state whether or not these beer-supply pipes as they came through the floor and into the cellar had any covering upon them.

A. They did not.

Defendants' counsel requested the complainant's counsel not to be too leading in his questions, as defendants' counsel is not given to raising objections, as a rule, while opposing counsel is examining witnesses, and for that reason the counsel is requested to be
175 more careful in his questions and not to have them too leading.

Q. 44. During all the time you worked for Meinhard, from 1877 to 1881, was there any covering upon the beer-supply pipes coming from the upper ice box to the lower ice box?

A. No, sir.

Q. 44. What kind of pipes were these beer-supply pipes?

A. Lead pipes, I think.

Q. 46. You may state whether or not these lead supply pipes were always bare?

A. Yes, sir.

Q. 47. Was there any communication or passage of any kind whatsoever from the upper to the lower ice box through which water or air could pass from the upper to the lower ice box?

A. No, sir.

Q. 48. What was next to the lower ice box in the cellar?

A. The wine cellar.

Q. 49. And was it through this wine cellar that the beer-supply pipes passed after they came through the floor?

A. Yes, sir.

Q. 50. During the time you worked for Meinhard did you have occasion to go into the wine cellar?

A. Yes, sir.

Q. 51. And in going into this wine cellar could you see these beer-supply pipes?

A. Yes, sir.

176 Q. 52. Do you remember whether there was any gas jet in the cellar?

A. Yes, sir.

Q. 53. Where was that gas jet located?

A. Near the wine-cellar door.

Q. 54. On which side of the wine-cellar door as regards the lower ice box was the gas jet?

A. On the west side of the wine cellar.

Q. 55. Then, would that be between the wine-cellar door and the lower ice box?

A. Yes, sir.

Q. 56. Was this gas jet usually kept lighted?

A. Very small.

Q. 57. And when you went into the cellar did you or not turn the gas up so as to be able to see?

A. Yes, sir.

Q. 58. Having, as you have stated, frequently attached kegs of beer and connected them with the rubber connection of the beer-supply pipes, state whether or not there was any water flowing down over the beer-supply pipes?

A. Only the water from the ice; that was all.

Q. 59. From the ice—where placed?

A. Above, about four feet and a half, I think, from the floor, in racks over the ice box.

Q. 60. That is from the ice located on the racks in the lower ice box?

A. Yes, sir.

Q. 61. Did any water follow the beer-supply pipes from the upper ice box to the lower ice box?

A. No, sir.

177 Q. 62. Was there any way by which the water from the upper ice box could get into the lower ice box?

A. No, sir.

Q. 63. When you wanted ice up in your bar in the hall where would you get it from?

A. From the basement ice box.

Q. 64. From what we have termed the ice box in the cellar?

A. Yes, sir; in the cellar.

Q. 65. Did Meinhard keep the saloon proper open on Sundays?

A. Yes, sir.

Q. 66. And was this beer-drawing apparatus of Meinhard's used on Sunday for supplying beer to the customers in the saloon?

A. Yes, sir.

Q. 67. As I understand the testimony, you worked for Meinhard during a period of about four years on Sundays and evenings and occasions of picnics and the like?

A. Yes, sir.

Q. 68. Have you been in Rochester since leaving here, in the summer of 1881?

A. No, sir.

Q. 69. You may state whether or not on certain occasions you looked into this upper ice box.

A. Yes, sir.

Q. 70. And on such occasions did you see the coils on the bottom of this upper ice box?

A. Yes, sir.

178 Q. 71. Were the coils in the bottom of this upper ice box when you left Meinhard's, in 1881?

A. Yes, sir.

Q. 72. And up to the time of your leaving Meinhard's, in 1881, was there or had there been any covering of any kind whatsoever upon or around the beer-supply pipes from the upper to the lower ice box?

A. No, sir.

Q. 73. Examine the model which I now show you, "Plaintiff's Exhibit Model Meinhard Apparatus," and state whether or not that is a substantially correct model of the construction and arrangement of Meinhard's beer drawing and cooling apparatus.

A. Yes, sir; that is it.

Q. 74. Does this little brass piece which is tacked against one of the slats of the wine cellar show correctly the location of the gas jet in the cellar?

A. Yes, sir.

Q. 75. Referring to Defendants' Exhibit "Meinhard Apparatus Model," state whether during the time you worked for Meinhard there was any rubber covering around the beer-supply pipes, as shown in this model.

A. No, sir.

Q. 76. Did you ever see any such covering around the beer-supply pipes?

A. No, sir.

Q. 77. Was there ever any such covering around the beer-supply pipes?

A. No, sir.

179 Q. 78. Were these pipes always bare?

A. Yes, sir.

Cross-examined by defendant's counsel, Mr. SULLIVAN:

X Q. 79. Are you the same Otto Hahn who made an affidavit in Chicago in October, 1885, in the case of Michael Magin against James D. McKay and others?

A. Yes, sir.

X Q. 80. Who first spoke to you about making that affidavit?

A. Mr. Schantz.

X Q. 81. Where did he see you?

A. In Chicago.

X Q. 82. He went to Chicago to see you, did he?

A. I saw him there.

X Q. 83. You had known Mr. Schantz before that time, had you?

A. Yes, sir.

X Q. 84. Where were you working at that time?
A. I worked at 173 Clark street, Chicago.
X Q. 85. What did Mr. Schantz say to you on that occasion?
A. He asked me to come down and make an affidavit.
X Q. 86. Did you talk with him about this apparatus?
A. No, sir.
X Q. 87. Did he say nothing about it?
A. No, sir.
180 X Q. 88. What did he say about going some place and making an affidavit?
A. He told me to come down to the patent office and give my statement how that beer pump was and that there was a lawsuit, and that was all, or a patent suit.
X Q. 89. Did he tell you between whom the suit was pending?
A. I don't know whether he did or not.
X Q. 90. Did he tell you Mr. Magin had brought suit against some Rochester saloon-keepers?
A. I am not certain.
X Q. 91. You had known Mr. Magin at this time, hadn't you?
A. Yes, sir.
X Q. 92. How long had you known Mr. Magin?
A. About twelve years.
X Q. 93. After talking with Mr. Schantz about this apparatus you went to the patent attorney's office and made this affidavit?
A. Yes, sir.
X Q. 94. Do you know what office it was?
A. I couldn't tell you the name.
X Q. 95. Whereabouts was it in Chicago?
A. Dearborn and Randolph street.
X Q. 96. Who went with you there?
A. Me and Mr. Schantz.
X Q. 97. No one else?
A. No, sir.
181 X Q. 98. How long did you remain there at the office?
A. About an hour, I think.
X Q. 99. Do you know who drew the affidavit?
A. I couldn't tell you. I don't know the name.
X Q. 100. Was the affidavit ready when you went there?
A. No, sir.
X Q. 101. It was drawn while you were there?
A. Yes, sir; while I was there.
X Q. 102. Did Mr. Schantz tell you what use was to be made of that affidavit?
A. No, sir.
X Q. 103. Didn't he tell you that Mr. Magin brought a suit against the saloon-keepers, and that he was beaten on that suit and wanted this affidavit to get a new trial on, or something of that kind?
A. No, sir.
X Q. 104. What reason did he give for coming out there to get this affidavit from you?

A. He told me there was a lawsuit, and ask me if I would go up to the patent office and tell just how that cooler was and the beer pump.

X Q. 105. Did he tell you his reason for coming out there?

A. No, sir; only to get that statement.

X Q. 106. Only to get your affidavit?

A. Yes, sir; the affidavit.

X Q. 107. Where did he first see you in Chicago on that occasion?

182 A. 173 Clark street.

X Q. 108. That was your place of business?

A. Yes, sir.

X Q. 109. What was the first thing he said to you?

A. He asked me if I would go up to the office with him and make a statement; that there was a lawsuit, and if I would make a statement and tell how the coils and barrels laid in Meinhard's cellar in the ice box, and I says, "I don't know as I could get away," and would try, and I asked the boss, and went up there and told how it was and went back to work.

X Q. 110. And that was all he said to you about this apparatus, was it?

A. Yes, sir.

X Q. 111. Did he tell you what Mr. Meinhard claimed about this apparatus?

A. I believe he said Meinhard claimed the patent, but I am not certain.

X Q. 112. What did he say about it?

A. Nothing.

X Q. 113. What did he say about Mr. Meinhard claiming that there was a rubber hose over the pipes?

A. He didn't speak anything about rubber hose to me.

X Q. 114. Did he say anything about coils?

A. No, sir.

X Q. 115. How long did this conversation in your place last on that occasion?

183 A. It didn't last ten minutes altogether; I didn't have time. I was working and I couldn't talk to him. He waited there until I could get off, and didn't have any conversation and didn't have time to talk to him.

X Q. 116. Did Mr. Schantz read any other affidavits to you on that occasion?

A. No, sir.

X Q. 117. He had a drawing of this Meinhard apparatus with him, did he?

A. No, sir.

X Q. 118. A photograph?

A. No, sir; he didn't have anything. He didn't show me anything.

X Q. 119. He explained to you, however, how it was made, did he?

A. No, sir.

X Q. 120. Didn't he tell you how this Meinhard apparatus was constructed?

A. No, sir; I knew it. He didn't have to tell me.

X Q. 121. You had known Mr. Schantz for some time, had you?

A. Yes, sir.

X Q. 122. How long had you known him?

A. I should think about seven years—that is, seven before I left. That would make it about twelve or thirteen years.

X Q. 123. You had known him about six years before you went to Chicago, then?

A. Yes, sir.

184 X Q. 124. When did you first hear of this lawsuit between Mr. Magin and the saloon-keepers in Rochester?

A. When Mr. Schantz came to Chicago.

X Q. 125. Did he tell you who sent him out there?

A. No, sir.

X Q. 126. You are at present living in Chicago, are you?

A. Yes, sir.

X Q. 127. When did you come from there to Rochester?

A. Sunday evening.

X Q. 128. Who came with you?

A. I came all alone.

X Q. 129. Who requested you to come this time?

A. Well, there was nobody requested me what time to come. I was going to come, anyway. I concluded to come down this time.

X Q. 130. Then no one asked you to come particularly just now?

A. No, sir; they didn't want me to come now.

X Q. 131. What did they say about your not coming now?

A. They didn't want me to come the time I did come.

X Q. 132. When did they want you to come?

A. They didn't say very particularly what time they wanted me to come. I didn't know when the case was coming up.

185 X Q. 133. Did they pay your expenses here?

A. No, sir.

Complainant's counsel states——

Defendants' counsel objects to complainant's counsel putting anything on record at this stage of the proceedings and while the witness is being cross-examined by defendants' counsel.

Complainant's counsel states that it was distinctly understood at the last session that the complainants had a witness residing in Chicago that *they* desired to examine, and that as a matter of convenience *they* had suggested to the witness if he would come here his expenses would be paid, and he would be paid for the loss of time, and that the witness is here in pursuance of such arrangement, and it is the intention of complainant's counsel to see that this witness is paid, not only his expenses, but for the time lost in being in attendance here as a witness.

Defendants' counsel especially calls the attention of the court to the foregoing improper statement of complainant's counsel and the court can readily infer the motive of making the same.

The complainant's counsel states that th- motive is to dispense with, if possible, a needless and absurd cross-examination, and that the court should know the facts, believing that the court and the balance of mankind knows it is unreasonable to expect a man
186 to leave his business in Chicago and come to Rochester without being repaid his expenses and compensated for his time.

X Q. 134. Then, before leaving Chicago, your expenses were not paid?
A. They were not paid in full; no, sir.
X Q. 135. When did you arrive in Rochester?
A. Sunday evening.
X Q. 136. About what time?
A. Half past six.
X Q. 137. Did you call at Mr. Magin's place of business on your arriving here?
A. Yes, sir.
X Q. 138. Did you see Mr. Magin?
A. Yes, sir.
X Q. 139. Have you talked with him about this suit?
A. No, sir.
X Q. 140. Didn't say anything about it?
A. No, sir.
X Q. 141. What were you talking about?
A. Went in and had a glass of beer and that was all. I just told him I was at home and I would see him next day.
X Q. 142. Did you see him the next day?
A. Yes, sir.
X Q. 143. And on that occasion did you have a talk with him about this suit?
A. No, sir.
X Q. 144. What were you talking about on that occasion?
187 A. I saw him, and that was all, and asked him what time the trial would come on.
X Q. 145. Was that all that was said?
A. Yes, sir.
X Q. 146. When did you next see him after that?
A. This morning.
X Q. 147. Where did you see him this morning?
A. At his place of business.
X Q. 148. Did you have a talk with him about this suit then?
A. No, sir.
X Q. 149. Did you have another glass of beer there to-day?
A. I believe we did have a glass of beer.
X Q. 150. Anybody drink with you?
A. No, sir.
X Q. 151. Mr. Magin drink with you?
A. No, sir.
X Q. 152. Drank alone, did you?
A. Yes, sir.

X Q. 153. When you left Mr. Magin's saloon where did you go to?

A. I came right here.

X Q. 154. Alone?

A. With Mr. Magin.

X Q. 155. Did you talk about this suit on your way coming here?

A. No, sir.

188 X Q. 156. Not a word at all?

A. No, sir.

X Q. 157. Where did you go to?

A. I came right up here.

X Q. 158. Did he tell you where he was going to?

A. I didn't know where we were going.

X Q. 159. He simply said he wanted you to go along with him?

A. Yes, sir.

X Q. 160. Where did you go?

A. I came here to Mr. Selden's office.

X Q. 161. And from here where did you go?

A. To Powers' hotel.

X Q. 162. And who did you meet there?

A. Mr. Bennett.

X Q. 163. The plaintiff's counsel?

A. Yes, sir.

X Q. 164. Is that the first time you met Mr. Bennett?

A. I met him in Chicago.

X Q. 165. When did you meet him in Chicago?

A. I couldn't tell the exact time; about three weeks ago, I think.

X Q. 166. Did he talk with you about this suit?

A. Had about five minutes' talk. He asked if I would come down.

X Q. 167. Did he talk with you about this apparatus?

189 A. No, sir; there was very little said about the apparatus.

X Q. 168. Didn't he tell you what he wanted you here for?

A. He said he would like to have me here on this suit.

X Q. 169. Didn't you tell him all about this apparatus then?

A. No, sir; he asked me a few questions and I answered him and he says, "That will do." I wasn't talking with him ten minutes.

X Q. 170. Did he tell you who he was?

A. He told me Mr. Bennett, Mr. Magin's lawyer.

X Q. 171. What did he say about this apparatus of Mr. Meinhard's?

A. I didn't have much talk about that.

X Q. 172. What did you talk about principally?

A. He asked me if I would come if he would pay my expenses down and asked a few questions about what I knew about it and I told him, and he asked if I would come and I said yes.

X Q. 173. Did you describe the apparatus to him?

A. I described the ice box in the cellar.

X Q. 174. And that was all?

A. Yes, sir.

X Q. 175. Did you tell him anything about the other part of it?

A. I told him I knew they had to dip water out of there.

190 X Q. 176. Did he tell you about the pipes not having a rubber hose over them?

A. I don't believe we talked about that at all.

X Q. 177. Now, you think you have stated the conversation that you had with Mr. Bennett on that occasion, do you?

A. Yes, sir.

X Q. 178. While in Mr. Selden's office this morning did you have a talk with Mr. Selden about this apparatus?

A. No, sir; not a word.

X Q. 179. Did you ever speak to Mr. Selden about it?

A. No, sir.

X Q. 180. When did you first see Mr. Selden?

A. I guess about half past ten.

X Q. 181. After half past ten to-day?

A. Yes, sir.

X Q. 182. When you came here this morning -hen Mr. Selden wasn't in?

A. Yes, sir; he was in.

X Q. 183. And you went from Mr. Selden's office to Powers' hotel, where you saw Mr. Bennett?

A. Yes, sir.

X Q. 184. And had a talk with him this morning?

A. About five minutes' talk at Powers' hotel.

X Q. 185. Talked about this apparatus?

191 A. He asked me if I knew all I did say in the testimony in Chicago, and I told him I thought I did.

X Q. 186. And then did you go and tell him what it was?

A. No, sir. He asked a few questions.

X Q. 187. What did he ask you?

A. He asked me if I remembered where that gas jet was. That was about all he asked me.

X Q. 188. What else did he ask you?

A. That was all. I came right down here then.

X Q. 189. Simply spoke about the gas jet and then came down here?

A. Yes, sir.

X Q. 190. Did he come down with you?

A. Yes, sir.

X Q. 191. While you were here this morning and before you were put on the stand did you examine these models?

A. I just looked at it, and he asked me if it looked natural and I said yes.

X Q. 192. Who showed it to you?

A. Mr. Bennett.

X Q. 193. What did he show you?

A. Just what is there. They were on the table.

X Q. 194. He showed you two models, did he?

A. Yes, sir.

X Q. 195. Where they on the same table that they are now?

A. No, sir. I believe they were on this table.

192 X Q. 196. The table on which the stenographer is writing?

A. Yes, sir.

X Q. 197. Did he tell you which of these models Mr. Meinhard claimed represented his apparatus?

A. No, sir.

X Q. 198. Did he tell you which was the Magin model?

A. No, sir.

X Q. 199 Did he call your attention to the rubber hose in the Meinhard apparatus?

A. He showed me.

X Q. 200. And what did he ask you about them?

A. He asked me if they were there, and that was all.

X Q. 201. And what did you tell him?

A. I told him no, sir.

X Q. 202. How long a time did you spend in examining these models this morning before you were examined?

A. Not over five minutes.

X Q. 203. You are stopping at Mr. Magin's house while you are in Rochester, are you?

A. No, sir.

X Q. 204. Have you ever talked with Mr. Gordon about this Meinhard apparatus?

A. No, sir.

X Q. 205. Where did you first meet Mr. Gordon?

193 A. I met him just before we came down here at Mr. Magin's.

X Q. 206. Did you meet him at Mr. Magin's this morning?

A. He went out as I was going in.

X Q. 207. And he came here with you, did he?

A. No, sir.

X Q. 208. Did you have a talk with him this morning?

A. No, sir.

X Q. 209. Did you say anything to him?

A. I asked him how he was and whether he got his brewery, and that was about all.

X Q. 210. You knew him before?

A. Yes, sir.

X Q. 211. You knew he claimed to be the inventor of this apparatus, didn't you?

A. No, sir.

X Q. 212. Didn't you know that?

A. No, sir.

X Q. 213. Had you never spoken to Mr. Gordon about this apparatus?

A. No, sir.

X Q. 214. How long did you say you worked for Mr. Meinhard?

A. About four years, on and off.

X Q. 215. And after you quit working for Mr. Meinhard you went to Chicago, did you?

A. Not right away; no, sir.

X Q. 216. You remained in Rochester a short time after you quit working for Mr. Meinhard?

194 A. A few months.

X Q. 217. What doing?

A. Tending bar.

X Q. 218. For whom?

A. Mike Nicholson.

X Q. 219. Did you speak with any person about this Meinhard apparatus from the time you quit working for Mr. Meinhard until you talked with Mr. Schantz in Chicago?

A. No, sir.

X Q. 220. He was the first person that you spoke to about it, was he?

A. He was the first man that spoke to me about it.

X Q. 221. While you worked for Mr. Meinhard he kept what is known as a concert hall, did he not?

A. Yes, sir; a picnic ground.

X Q. 222. Did he keep a number of young men working for him during that time in the concert hall?

A. Yes, sir.

X Q. 223. About how many would you say?

A. Sometimes they would have a big house and would put on more men and sometimes less, according to the business.

X Q. 224. On an average, how many would he have in his employ?

A. About six or eight, on an average, I guess.

X Q. 225. He done much more business in the concert hall than he did in the saloon, did he not?

195 A. Yes, sir.

X Q. 226. And how many of those boys were engaged in the concert hall?

A. They were all engaged in there except the bartender outside.

X Q. 227. The outside saloon, then, only required one bartender?

A. That is all, except after a concert they would put a man from the inside bar. In the evening when the concert was over they would generally flock in the saloon.

X Q. 228. And that was the only occasion on which the concert-hall boys would work in the saloon?

A. Yes, sir.

X Q. 229. Did you know Mr. Felix Guenther?

A. Yes, sir.

X Q. 230. Did you work for Mr. Meinhard while he was working for him?

A. Yes, sir.

X Q. 231. What was he doing there?

A. Bartender.

X Q. 232. How long was he his bartender?
A. I think he was there about a year.
X Q. 233. Do you recollect what year that was?
A. I think it was in 1877.
X Q. 234. That was about the time that you commenced working for Mr. Meinhard?
A. Yes, sir.
196 X Q. 235. Did you know a young man named Gutacher?
A. Yes, sir.
X Q. 236. Did he also work for Mr. Meinhard?
A. Yes, sir.
X Q. 237. What doing?
A. Tending bar.
X Q. 238. Did he work for him while you worked there?
A. Yes, sir.
X Q. 239. Did you also know Albert Stief?
A. Yes, sir.
X Q. 240. What did he do for Mr. Meinhard?
A. He was a waiter the most of the time until the last part, when he got to be a bartender. He worked by the side of me behind the bar.
X Q. 241. How long did he work for him?
A. He worked for him all the time I did—four years. I don't know how long he worked after that.
X Q. 242. He was working there when you left, was he?
A. Yes, sir; but not steady.
X Q. 243. Do you know who put up this beer-cooling apparatus for Mr. Meinhard?
A. No, sir.
X Q. 244. It was in the saloon when you commenced working for him, was it?
A. Yes, sir.
X Q. 245. Do you recollect what time in 1877 you commenced working for Mr. Meinhard?
197 A. In the spring of the year, I think, or summer.
X Q. 246. Who was bartender at that time?
A. Felix Guenther.
X Q. 247. Did you see any plumber working about Mr. Meinhard's while you were engaged there?
A. No, sir; only the gas would get out of order once in awhile. The gas pipes and such things as that.
X Q. 249. Who was it that you saw working on the gas pipes?
A. I couldn't tell. I didn't know them.
X Q. 250. What were they doing on the gas pipes?
A. They would generally get stopped up and the rain or water would get in the pipes and would have to blow them out.
X Q. 251. What did you see them doing on the gas pipes?
A. I saw them have a hose to it and blow out the water.
X Q. 252. Who done that?
A. The plumber.
X Q. 253. Do you know his name?

A. No, sir.

X Q. 254. Do you know Mr. Barr or Mr. Schaub, plumbers, of this city?

A. No, sir.

X Q. 255. Are you acquainted with Mr. Barr, of Barr & Creelman?

A. No, sir.

198 X Q. 256. While you worked for Mr. Meinhard, or at any other time, did you see any changes or repairs made on this apparatus?

A. No, sir.

X Q. 257. It was in the same condition when you left in 1881 that it was when you commenced work in 1877, was it?

A. Yes, sir.

X Q. 258. How many faucets were in this apparatus?

A. I think there were four—three or four. I wouldn't be certain.

X Q. 259. Did they generally keep four kegs on tap?

A. No, sir.

X Q. 260. How many would they keep on tap?

A. They only kept two barrels.

X Q. 261. And what did they use the other two faucets for?

A. They used them when they had different kinds of beer. In the summer, this bock beer or kulmbacher.

X Q. 262. So that they only kept two kegs tapped, as a general thing?

A. Yes, sir; as a general thing.

X Q. 263. And were there four supply pipes in this apparatus?

A. I believe there were four supply pipes.

X Q. 264. Of what material were those pipes?

A. Lead, I think.

X Q. 265. Were they lined?

199 A. No, sir.

X Q. 266. Just plain lead pipes, were they?

A. Yes, sir; plain lead pipes. I should judge they were lead. I am not a judge of pipe.

X Q. 267. You never examined them very closely, I suppose?

A. No, sir; I had no occasion for it.

X Q. 268. What was the length of these pipes?

A. It is pretty hard telling what the length is, owing to the coils inside. I never measured them.

X Q. 269. There were coils inside, were they?

A. Yes, sir; brought the beer up that the beer run through.

X Q. 270. Were the coils made by coiling the supply pipes onto the bottom of the upper ice box?

A. Yes, sir; they were made in the bottom of the upper ice box.

X Q. 271. In other words, the coils were a part of the supply pipes, were they?

A. Yes, sir.

X Q. 272. How many feet of lead pipe were they in each coil?

A. I couldn't tell you.

X Q. 273. About how many?

A. I don't know. I will say about four feet, I think, or three and a half to four feet, in a coil in the bottom of the box.

X Q. 274. And those coils rested in the bottom of the box, did they?

A. Yes, sir.

200 X Q. 275. What was the size of these supply pipes?

A. I couldn't tell you that.

X Q. 276. Can you state the length of them?

A. I could not; I never measured them.

X Q. 277. You never had occasion to take out these supply pipes, did you?

A. No, sir.

X Q. 278. Did you ever clean them?

A. No, sir.

X Q. 279. Did you ever see them cleaned by any person?

A. No, sir; I don't think I did.

X Q. 280. Did these supply pipes go straight down from the upper ice box to the lower ice box?

A. Right straight down through the floor.

X Q. 281. Was the upper ice box lined?

A. Not as I know of.

X Q. 282. What was the size of it?

A. I think that was about two by one.

X Q. 283. Two feet which way?

A. Lengthways.

X Q. 284. About a foot in depth?

A. About a foot crossways or hardly a foot across.

X Q. 285. Was there a cupboard underneath this upper ice box?

A. Yes, sir.

X Q. 286. What was the size of that cupboard?

201 A. I should judge about two feet high and about two feet wide.

X Q. 287. What was kept in the cupboard?

A. Nothing that I know of.

X Q. 288. Did it have any shelves in it?

A. No, sir.

X Q. 289. That cupboard was kept closed, as a general thing, was it?

A. Yes, sir. I don't believe there was a door on it, but I am not certain.

X Q. 290. You never had occasion to open it?

A. No, sir.

X Q. 291. Or to look in there, I suppose?

A. No, sir.

X Q. 292. How large were the coils in the upper ice box through which these beer-supply pipes ran?

A. I couldn't tell you how large they were.

X Q. 293. Don't I understand you to say that the beer-supply pipes and the coils in the upper ice box were one continuous pipe?

A. No, sir; four different pipes.

X Q. 294. That is, each supply pipe had its own distinctive coil?

A. Yes, sir.

X Q. 295. But the coil and the supply pipe made one continuous pipe?

A. The coil and the supply pipe; one pipe for each faucet; yes, sir.

X Q. 296. And each coil and its supply pipe was one continuous supply pipe?

202 A. Yes, sir.

X Q. 297. In other words, there was no fastening between the coils and the supply pipe, was there?

A. There must be a fastening at the faucet.

X Q. 298. Yes; at the faucet, but not at the other end?

A. No, sir.

X Q. 299. The end of the pipe at the faucet, of course, had a coupling?

A. Yes, sir.

X Q. 300. What was the size of the hole in the lower ice box through which these beer-supply pipes ran?

A. I should judge they were about an inch or half an inch or three-quarters of an inch.

X Q. 301. Each hole?

A. Yes, sir; round—in a circle.

X Q. 302. There was a separate hole for each supply pipe, was there not?

A. Yes, sir.

X Q. 303. How far apart were these holes?

A. They were right together; right close to each other.

X Q. 304. About an inch apart or half an inch?

A. Right close to each other.

X. Q. 305. How near each other would you say?

203 A. They run right close together all the way down after they got out of the ice cooler.

X Q. 306. The holes in the lower ice box, how near were they together? I mean the holes through which the beer-supply pipes ran.

A. I don't know.

X Q. 307. State as near as you can.

A. I couldn't tell you whether they came all out of one hole or whether there were different holes. I am not certain.

X Q. 308. Whereabouts in the lower ice box did these supply pipes enter?

A. At the side; at the east side of the box.

X Q. 309. And how far from the top?

A. They were between four and four and a half feet, I think, where they came through.

X Q. 310. And after they came through did they go directly through the floor of the saloon?

A. No, sir; they came through the wine-room.

X Q. 311. And then through the floor of the saloon, did they?

A. Yes, sir; from the ice box to the wine-room and from the wine-room up through the saloon floor.

X Q. 312. And what was the size of the hole in the saloon floor through which each beer-supply pipe passed?

A. I don't know.

X Q. 313. About what size would you say?

A. I couldn't tell you what size they were; I don't know whether different holes or one hole.

X Q. 314. You never examined that, did you?

204 A. No, sir.

X Q. 315. And you don't know whether the supply, in going into the lower ice box, went through different holes or went through one hole, do you?

A. No, sir.

X Q. 316. How much of these supply pipes were in the lower ice box?

A. I couldn't tell exactly how much; maybe three feet or so or four feet.

X Q. 317. That is, there were three or four feet of the lead pipe, were there?

A. Yes, sir; before the hose was attached.

X Q. 318. And at the end of this lead pipe the rubber hose was attached, was it?

A. Yes, sir.

X Q. 319. And these rubber hose were of what length?

A. About a yard or a yard and a half, I should say.

X Q. 320. You never measured them, did you?

A. No, sir.

X Q. 321. Do you know the size of this rubber hose?

A. No, sir; I couldn't tell the exact size.

X Q. 322. How were they fastened to the supply pipes?

A. By wire.

X Q. 323. They were slipped over the supply pipes and fastened on by a wire?

A. Yes, sir.

205 X Q. 324. And the other end of the rubber pipe was attached to the faucet by a coupling?

A. Yes, sir.

X Q. 325. What was the size of this lower ice box?

A. I should judge about 12 by 5.

X Q. 326. 12 feet which way?

A. Lengthways—east and west.

X Q. 327. And about five feet wide?

A. Yes, sir.

X Q. 328. And how high?

A. I think about six and a half feet high.

X Q. 329. It didn't go to the top of the ceiling, then?

A. They had it kind o' boxed in.

X Q. 330. It didn't go to the top?

A. Boxed in at the top. There was a roof over the ice box, and then comes the ceiling.

X Q. 331. What was the distance between the top of the lower ice box and the ceiling of the saloon?

A. I couldn't tell you. I never measured it.

X Q. 332. About what distance would you say?

A. It might be 15 or 16 feet.

X Q. 333. Was it filled in with anything?

A. I couldn't tell you that.

X Q. 334. I think you misunderstood my question, so I will ask it again. What was the distance between the top of the lower ice box and the saloon floor?

206 A. I don't know how thick that floor was. There was no distance; the box was built right to the floor.

X Q. 335. Then the ice box extended up to the floor of the saloon?

A. Yes, sir.

X Q. 336. And there was no space between the ice box and the saloon floor?

A. No, sir.

X Q. 337. You say this lower ice box was about five feet deep. Do you mean by that five feet north and south?

A. Yes, sir.

X Q. 338. It rested against the south wall of the building, did it?

A. It rested against the south wall; yes, sir.

X Q. 339. And the ice box in the saloon was directly overhead, was it?

A. Not quite; a little east.

X Q. 340. How far east would you say?

A. I should think a foot or two, that is all, or two feet.

X Q. 341. The ice box in the cellar was directly underneath the hallway between the old and the new part of the building, was it?

A. Yes, sir.

X Q. 342. The ice box in the saloon was in the old part of the building, was it?

A. Yes, sir.

X Q. 343. So that the ice box in the cellar, then, was a little south?

207 A. Next to the ice box in the saloon and south of it.

X Q. 344. This hallway referred to led from the street to the concert hall, did it?

A. No, sir.

X Q. 345. Where did that hallway lead to?

A. Led to the bowling alley.

X Q. 346. Was the hallway put in there before Mr. Meinhard went in or afterwards?

A. I think it was put in before.

X Q. 347. So that a person in going to the bowling alley wouldn't have occasion to go through the saloon?

A. No, sir.

X Q. 348. What was the width of that hall?

A. I couldn't tell exactly; it was about six feet, I think, or five or six.

X Q. 349. What use was made of the building that was south of this saloon, adjoining the saloon?

A. Used for a storage-room, I think.

X Q. 350. Do you know if this lower ice box was filled in?

A. I couldn't tell you that.

X Q. 351. Do you know if it was lined with anything?

A. No, sir; I couldn't tell.

X Q. 352. What became of the melted ice water in the lower ice box?

A. That ran right down the floor and ran off somewhere. I believe there was a sewer there or something.

208 X Q. 353. There was a sewer there, was there?

A. I am not certain about that; it dropped on the floor.

X Q. 354. You never examined it as to that, did you?

A. No, sir.

X Q. 355. How many kegs of beer did you generally keep in the lower ice box?

A. They were mostly all barrels, and had ten to twelve in there.

X Q. 356. Didn't keep many eighths or quarters?

A. No, sir; only when there were concerts, so it could be carried into the hall. We had to have quarters then, because the barrel would be too heavy.

X Q. 357. The beer used in the concert hall was, then, all quarters?

A. Yes, sir; quarters.

X Q. 358. The beer drawn in the saloon was used in barrels, then?

A. Yes, sir; barrels and half barrels.

X Q. 359. Whose business was it to tap the barrels and half barrels?

A. Generally the barkeeper's.

X Q. 360. And when they required beer for the concert hall one of the young men would go down and get a quarter or an eighth?

A. A quarter; no eighths.

X Q. 361. Would more than one go for the keg?

A. No, sir.

209 X Q. 362. The inside of this lower ice box was quite dark, was it not?

A. Yes, sir.

X Q. 363. Would you have occasion to use a candle when you went there?

A. Yes, sir.

X Q. 364. Would you take a candle with you?

A. Generally stood down there, and we would light it by the gas jet when we went in.

X Q. 365. Did you take the candle with you?

A. Yes, sir.

X Q. 366. And was the candle kept lit, also?

A. Yes, sir.

X Q. 367. You didn't take the candle down with you, then?

A. No, sir.

X Q. 368. How long would it take to get a keg of beer out of the lower ice box?

A. Would take about three or four minutes to get it upstairs.

X Q. 369. You were not in the habit of staying in the lower ice box very long, I suppose?

A. No, sir.

X Q. 370. When you went down for the keg of beer you didn't have occasion to go into the wine cellar.

A. No, sir; not when I went for beer.

X Q. 371. The wine-room, as I understand you, was east of the ice box?

A. Yes, sir; adjoining.

X Q. 372. What was the size of the wine-room east and west?

210 A. I couldn't tell you exactly.

X Q. 373. About what size?

A. I am not a very good judge. I guess between 16 and 17 feet.

X Q. 374. Then the wine-room, as I understand you, is 16 or 17 feet east and west?

A. Yes, sir; about that.

X Q. 375. Did it run to the east wall of the building?

A. Yes, sir.

X Q. 376. What was south of the wine cellar?

A. There wasn't anything there, I don't think.

X Q. 377. Didn't the wine cellar run to the south wall of the building?

A. Yes, sir.

X Q. 378. Now, you say the wine cellar did run to the south wall of the building?

A. Yes, sir; but it didn't run to the east.

X Q. 379. How near the east wall did it run?

A. I should think about 10 or 15 feet from the east wall.

Recess until 2.30 p. m.

2.30 P. M.

Parties appeared as before.

Redirect examination by Mr. BENNETT, counsel for the complainants:

Re-D. Q. 380. Who delivered the beer into the cellar at Meinhard's?

A. The beer drivers.

211 Re-D. Q. 381. And who placed it in the lower ice box?

A. The beer drivers.

Re-D. Q. 382. And when you wanted beer upstairs in the hall you had to go to the lower ice box to get it, did you?

A. Yes, sir.

Re-D. Q. 383. On such occasions I understand you to have stated you took a lighted candle in the lower ice box with you?

A. Yes, sir.

Re-D. Q. 384. Where did you get this candle from?

A. It always stood right under the gas jet outside of the ice box.

Re-D. Q. 385. And how would you light the candle each time that you went down into the cellar to go into the lower ice box?

A. By the gas jet.

Re-D. Q. 386. How near was this gas jet to where the beer-supply pipes came throught the floor and passed into the wine cellar?

A. I couldn't tell exactly; it was very near it.

Re-D. Q. 387. Was it or not so that when the gas was turned on that the pipes could readily be seen?

A. Yes, sir.

Re-D. Q. 388. On such occasions when you went into the cellar and turned up the gas light did you see the beer-supply pipes?

A. Yes, sir.

Re-D. Q. 389. Were those beer-supply pipes always bare?

212 A. Yes, sir.

Re-D. Q. 390. Had there been any covering of any kind or nature whatsoever upon or around those beer-supply pipes leading from the upper to the lower ice box, would you certainly have known of it and seen it?

A. Yes, sir.

Re-D. Q. 391. Am I correct in understanding you that the beer-supply pipes came straight down from the upper ice box through the floor?

A. Yes, sir.

Re-D. Q. 392. And then what direction did they take after coming through the floor?

A Went slanting and went through the wine-room and into the ice box.

Re-D. Q. 393. Went slanting?

A. Yes, sir.

Re-D. Q. 394. And into and through a corner of the wine cellar and into the lower ice box?

A. Yes, sir.

Re-D. Q. 395. Was the wine cellar kept locked?

A. Yes, sir.

Re-D. Q. 396. Where was the key kept?

A. Behind the bar in a drawer.

Re-D. Q. 397. When you wanted to go into the wine cellar, would you have to go behind the bar for the key?

A. Would have to go behind the bar or ask for it.

Re-D. Q. 398. Did you frequently have occasion to go into the wine cellar.

213 A. Yes, sir.

Re-D. Q. 399. On the occasions when you went into the wine cellar did you or not see these beer-supply pipes?

A. Yes, sir.

Re-D. Q. 400. And were they always covered or uncovered?

A. Uncovered.

Re-D. Q. 401. Am I correct in understanding you to have testified that you could not remember whether the beer-supply pipes in going into the lower ice box went through separate holes or through one hole?

A. Yes, sir.

Re-D. Q. 402. You can't recollect whether they went through one hole or separate holes?

A. No, sir.

Re-D. Q. 403. And is the same true about the pipes passing through the floor, that you can't remember whether they passed through separate holes or through one opening in the floor?

A. Yes, sir.

Re-D. Q. 404. Reference has been made to an affidavit which you made in the case of Magin against McKay and against Welker. Have you seen that affidavit or a copy of it since the day you gave it in Chicago?

A. No, sir.

Re-D. Q. 405. On going to the lawyer's office, as you have stated, to give this affidavit, did he prepare this affidavit in your presence?

A. Yes, sir.

214 Re-D. Q. 406. Did you describe the construction and arrangement of the Meinhard apparatus to this lawyer?

A. Yes, sir; I told him all I knew about it.

Re-D. Q. 407. And did he write it down as you gave it to him?

A. Yes, sir.

Re-D. Q. 408. And then you swore to that statement?

A. Yes, sir; I did.

Re-D. Q. 409. Read the paper which I now show you and state whether or not you recognize that as being a copy of the affidavit which you gave at that time.

A. That is right.

(Signed) OTTO HAHN.

Complainant's counsel offered in evidence a copy of the last witness' affidavit, being the copy identified by him.

Defendants' counsel makes no objection to the use of the copy.

Defendants' counsel objected to the affidavit as being incompetent.

GEORGE J. ENGLERT, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is George J. Englert. I will be 28 years old next May. I reside 198 Clinton street. I am delivering pop for T. W. Galvin.

215 Q. 2. Do you know John Meinhard, of Rochester, who formerly kept a saloon at Falls Field, on North St. Paul street, under the firm of Gilbert & Meinhard?

A. Yes, sir.

Q. 3. Did you ever work for Gilbert & Meinhard; and, if so, when?

A. Yes, sir; I went to work for them in 1876—that is, helping out. In 1877 I went to work steady for them by the week.

Q. 4. How much salary per week did you receive?

A. $5.00 per week.

Q. 5. What time in 1877 was it that you commenced working steadily for Gilbert & Meinhard by the week?

A. In April.

Q. 6. How long did you continue to work for them steadily by the week?

A. Until January, 1878.

Q. 7. After January, 1878, did you work for Gilbert & Meinhard at any time; and, if so, when and how long?

A. After 1878 I used to help them out for picnics or set up nine-pins in the bowling alley.

Q. 8. And on Sundays?

A. Yes, sir; and on Sundays.

Q. 9. How long did you continue so helping them out on picnic occasions and Sundays and nights?

A. I helped them out until Meinhard moved over to Germania hall.

216 Q. 10. In what capacity were you employed when you worked for Gilbert & Meinhard steadily from April, 1877, to January, 1878?

A. In the morning I would sweep out and wash the beer glasses and clean up around the bar and fix the ice boxes and cut up sandwiches, and after I would get my work all done in the bar-room I would have to go into the hall and clean up the hall, and from picnic nights, if we had a picnic, to get ready for Sunday, and all such work, and in the morning I would fill up the ice boxes with ice; break up the ice in small pieces. Back of the bar we had a tank that we would fill up for making lemonade and stuff and dip out the water and clean up the whole place.

Q. 11. During the time you worked for Meinhard & Gilbert steadily who was their barkeeper?

A. Felix Guenther.

Q. 12. And who was their assistant barkeeper in the saloon?

A. I was. I was the second bartender.

Q. 13. And were you second bartender during all the time you worked there steadily from April, 1877, to January, 1878?

A. Yes, sir.

Q. 14. While you worked for Gilbert & Meinhard did they have a beer drawing and cooling apparatus put in their saloon?

A. Yes, sir.

Q. 15. When was that and by whom was it put in, if you know?

A. I think it was put in by Mr. Neuhart. He was the one who sold the pump there, and Mr. Barr was the plumber.

217 Q. 16. When was it this beer-drawing apparatus was put in by Gilbert & Meinhard?

A. Spring of 1877.

Q. 17. Describe the beer drawing and cooling apparatus that was put into Gilbert & Meinhard's in 1877 while you were the second barkeeper.

A. There was a little box in the bar-room floor back of the bar, and there was four faucets to it and four pipes connected from there

which were coiled on the inside, and from there they ran down through the floor and slanted over through the wine-room into the ice box in the cellar.

Q. 18. For what purpose were these four pipes that you speak of?

A. To draw the beer from the lower ice box up.

Q. 19. The kegs of beer, then, were kept in the lower ice box in the cellar?

A. Yes, sir.

Q. 20. How were these pipes that passed from the upper to the lower ice box connected with the faucets on the kegs of beer in the cellar?

A. There was a rubber hose on the end and a coupling and screwed onto the faucet.

Q. 21. Had each of these beer-supply pipes a rubber hose on its end in the lower ice box?

A. Yes, sir.

Q. 22. And how were these rubber pipes connected to the ends of the beer-supply pipes?

A. They were slipped over and wired.

Q. 23. And how were the opposite ends of the rubber connecting pipes connected to the beer faucet?

218 A. With a coupling.

Q. 24. Other than these rubber connections at the end of each beer-supply pipe in the lower ice box, was there or not any rubber pipe or hose around or over the beer-supply pipes?

A. No, sir; they were bare.

Q. 25. Were the beer-supply pipes bare from the point where they left the upper ice box down and into the lower ice box?

A. Yes, sir.

Q. 26. After this beer cooling and drawing apparatus that you have described was put in by Neuhart and Barr, was it used in the saloon for the drawing of the beer?

A. Yes, sir.

Q. 27. And was it thereafter used so long as you remained second bartender, until January, 1878?

A. Yes, sir.

Q. 28. What, if anything, was next to the ice box in the cellar?

A. The wine-room.

Q. 29. How was the wine-room divided off from the rest of the cellar?

A. There was a slat partition through.

Q. 30. And it was into and through the corner of this wine cellar that you say the beer-supply pipes passed after coming through the floor?

A. Yes, sir; in the corner.

Defendants' counsel again requests complainant's counsel to avoid asking leading questions for reasons already stated.

219 Q. 31. Have you spoken of certain coils that were in the upper ice box? How many of those coils were there?

A. There were four coils.

Q. 32. And in what part of the upper ice box were they located?

A. In the top of the ice box.

Q. 33. What do you mean by the top of the ice box?

A. It was a tank in the top of the ice box—a little water tank where we kept the ice in to keep these coils cool, and they were laying in the bottom of that, and this ice used to lay right on them.

Q. 34. Then these coils laid on the bottom of this ice tank?

A. Yes, sir.

Q. 35. And what, if anything, did you place into this tank, on the bottom of which rested these four coils?

A. There was a regular cupboard from there down.

Q. 36. A cupboard underneath?

A. Yes, sir.

Q. 37. What, if anything, did you put in on top of these coils?

A. Ice, to keep the beer cool.

Q. 38. During the time you worked steadily at Meinhard's whose duty was it to put the ice in the upper ice box?

A. It would be my work.

Q. 39. And did you do that continuously?

220 A. Yes, sir.

Q. 40. How often each day would you put the ice in?

A. I used to dip the water out in the morning and put in two pails of ice, and about noon before I would go to dinner I would take out what water I could and fill it up again, and nights I would do the same and about seven o'clock, so as to have the beer cool for the people at night.

Q. 41. And that was your daily duty, was it?

A. Yes, sir.

Q. 42. You say you dipped the water out of the upper ice box. What water was it that you dipped out?

A. Where the ice melted—the ice water.

Q. 43. Was there any way of getting the water out of the upper ice box other than dipping it out?

A. No, sir.

Q. 44. Was there no way in which you could let it run off?

A. No, sir.

Q. 45. Was there any drip pipe to carry the melted-ice water off?

A. No, sir.

Q. 46. What would you use for dipping this water out of the upper ice box?

A. I used to take a quart measure and an old pail and throw it out in the street.

Q. 47. Was this upper ice box open so you could get the ice in and the water out?

A. There was a cover to it.

221 Q. 48. How high was this cupboard that you say was underneath this upper ice box?

A. About a foot and a half high or it may have been two; I never measured it.

Q. 49. And did the beer-supply pipes pass through the bottom of the upper ice box and this closet?

A. Yes, sir; run right down straight through the floor.

Q. 50. By looking into the closet underneath the upper ice box could you see the beer-supply pipes?

A. Yes, sir.

Q. 51. Was there any covering around them?

A. No, sir; the pipes were bare.

Q. 52. What kind of pipes were these beer-supply pipes?

A. They were the same as your small finger; four lead pipes.

Q. 53. Four small lead pipes?

A. Yes, sir.

Q. 54. How was it fixed where these pipes passed through the bottom of the upper ice box?

A. They were soldered around to keep the water around the coils and ice.

Q. 55. So that no water could leak out of the ice box where the beer-supply pipes passed out?

A. No, sir.

Q. 56. Did you ever know of any water leaking out of the upper ice box or tank?

A. No, sir.

222 Q. 57. In passing through the floor did these beer-supply pipes pass through separate openings or one opening?

A. One opening; one hole.

Q. 58. And as they passed through the floor of the saloon did they enter directly into the cellar?

A. They came through the floor and slanted over through the wine-room into the ice box.

Q. 59. As these beer-supply pipes came through the floor and before entering the wine cellar could they be seen readily?

A. Yes, sir.

Q. 60. And could they also be seen in the wine cellar?

A. Yes, sir.

Q. 61. Where the beer-supply pipes passed into the lower ice box did they pass through separate openings or through one opening?

A. One opening.

Q. 62. How often each day did you used to go into this lower ice box during the time you worked there steadily?

A. Sometimes I went down there once and sometimes twice a day and three times.

Q. 63. And it was a part of your daily duty to tap the beer and make the connections with the beer-supply pipes leading up into the upper ice box?

A. Yes, sir.

Q. 64. Was there any ice in this lower ice box?

A. Yes, sir; where they kept the ice.

Q. 65. And was it there where you would get the ice each day for the upper ice box?

223 A. Yes, sir; would go down and break it up fine and put it upstairs.

Q. 66. How was the ice arranged in the lower ice box?

A. There were shelves, and the beer they used to have stored be-

low, and the ice water from the shelves used to drip down on that and keep it cool.

Q. 67. The ice was then placed upon slatted shelves?

A. Yes, sir; and the ice water used to run on the beer.

Q. 68. Did any water come from the upper ice box into this lower ice box?

A. No, sir.

Q. 69. Was there any connection or passage-way between the upper and lower ice box for water or air?

A. No, sir.

Q. 70. Had there been any rubber hose or other covering surrounding the beer-supply pipes from the upper to the lower ice box would you have seen it?

A. You had to see it if they were there, but they were bare.

Q. 71. They were bare all the time, were they?

A. Yes, sir.

Q. 72. From the time this apparatus was put in there by Neuhart and Barr, as you have stated, about the spring of 1877, until you left there in January, 1878, were the beer-supply pipes always bare?

A. Yes, sir.

224 Q. 73. During all that period was there any way by which the ice water from the upper ice box could possibly get down into the lower ice box?

A. No, sir.

Q. 74. How far did the beer-supply pipes extend into the lower ice box?

A. It may have been three feet—two or three feet; I never measured it.

Q. 75. And then onto the end of each of these this rubber coupling you have spoken of was fastened?

A. Yes, sir.

Q. 76. Did the beer-supply pipes, as they came into the lower ice box, go above or below the shelf containing the ice?

A. Above the shelf.

Q. 77. And did they or not extend out over the shelf?

A. Yes, sir; just about, and then the hose was *was* wired on.

Q. 78. Was any change made in this beer drawing and cooling apparatus from the time it was put in until you left, in January, 1878?

A. No, sir.

Q. 79. No change whatever?

A. No, sir; only they changed a pump.

Q. 80. Do you remember when they changed the pump?

A. Yes, sir.

Q. 81. When was that?

A. That was in 1878.

225 Q. 82. Was that before or after you stopped working for Gilbert and Meinhard steadily?

A. That was while I was working there; they put one of these square box pumps on it; they unscrewed one and set the other on.

Q. 83. What kind of a pump did they have before they had the square box pump?

A. A walking-beam; one of the first that came out.

Q. 84. Now, other than the change of the pumps, was any change made in this beer cooling and drawing apparatus as it was put in until you left there in January, 1878?

A. No, sir.

Q. 85. Were the coils in the bottom of the upper ice box when you left there in January, 1878?

A. Yes, sir.

Q. 86. At the time you left there in January, 1878, was there any way of getting the water resulting from the melting of the ice out of the upper ice box other than by dipping it out?

A. No, sir.

Q. 87. When you stopped working steadily for Gilbert & Meinhard in January, 1878, was there any arrangement whatsoever by which the water could be drawn out of the upper ice box?

A. No, sir.

Q. 89. Was there any light in the cellar?

A. There was a gas burner.

Q. 90. Where was that gas burner located?

A. At the wine-room.

226 Q. 91. How near the door of the wine-room?

A. At the corner.

Q. 92. Was it on the side towards the ice box or the opposite side?

A. Yes, sir; towards the ice box.

Q. 93. What use was made of this gas burner in the cellar?

A. Used to have a small light, and when we would run down we would turn it up and light the candle to go into the ice-room to tap beer.

Q. 94. Would you take a candle in the lower ice box when you went in to tap beer?

A. Yes, sir.

Q. 95. When the gas light was turned up could you or not plainly see these beer-supply pipes coming from the upper ice box?

A. Yes, sir; always seen them.

Q. 96. Did they come through the floor in such a manner and bend before entering the wine cellar so that any one could see them?

A. Yes, sir; always seen them.

Q. 97. What did you always find to be their condition as to being covered or uncovered?

A. The burner would be there and you could see the pipes and they were bare.

Q. 98. And always so, were they?

A. Yes, sir.

Q. 99. Did they always keep a candle in the cellar so as to light it on going into the lower ice box?

A. Yes, sir.

227 Q. 100. What became of the water from the melting of the ice in the lower ice box?

A. Used to run in the sewer.

Q. 101. Did it go onto the floor and from there into the sewer?

A. Yes, sir.

Q. 102. Was the saloon in which this beer-drawing apparatus was located open on Sundays?

A. Yes, sir.

Q. 103. Was the beer drawn from this apparatus on Sundays?

A. On Sunday morning until about one or two o'clock, and then we moved out into the hall or summer garden, as they called it.

Q. 104. Was that when the concerts commenced?

A. Yes, sir.

Q. 105. And when the concerts commenced Sundays you would close up the main bar?

A. Yes, sir; and would be out in the hall.

Q. 106. Who put the ice upon the shelves in the lower ice box?

A. The iceman would throw it down and we would all help.

Q. 107. The iceman and yourselves, then, would put it on the shelves?

A. Yes, sir.

Q. 108. And who put the kegs of beer in the ice box?

A. The peddler would bring a whole lot on Saturdays and
228 would throw it down the front, and after he had it down some of us would roll it in and others pile it up and all help together.

Q. 109. Other than Saturdays would others than the peddler put it in?

A. The peddler and all of us; whoever were around handy to help.

Q. 110. You say you stopped working steadily for Gilbert & Meinhard in January, 1878. How did you stop working steadily for them at that time?

A. I was discharged.

Q. 111. Why were you discharged?

A. Well, it was on Wednesday night that the bowling club—they used to roll on Wednesday night, and the beer was empty, and I run down cellar to tap some beer and turned up the gas, and during that time I heard them all hollering upstairs, and I went up to see what they were hollering about, and there was a big snow-storm, and we looked out and the street car was turned over in front of the place, and I run down so Meinhard wouldn't see me and tapped a keg of beer and turned it on, and when I turned it on the candle went out and the beer flew all over, and I had a pipe burned off, and Mr. Meinhard came down and told me what he would do and would make me pay for it and told me to get out of the place, and I went upstairs all wet. I shut the beer off first and went up and put on my coat and hat and went home, and Friday I went back and got my pay.

Q. 112. Where was it that the beer-supply pipe had been burned off?

A. Above the gas burner in the cellar.

229 Q. 113. How did it happen that it was burned off?

A. I turned on the gas, and the burner was below the pipe and the pipes were empty then and no beer in the pipes, and I staid up a few minutes too long, and when I came down I went in the ice box and knocked the faucet in the beer and coupled it on and opened the faucet, and when I got out the beer was flying all over.

Q. 114. Are we to understand, then, that it was the heat of this gas light that melted one of the pipes?

A. Yes, sir; it was the swinging burner.

Q. 115. And it swung around so as to be nearly under the beer-supply pipes, did it?

A. Yes, sir.

Q. 116. At that time—that is, when this accident happened—was there any covering of any kind whatever around the beer-supply pipes?

A. No, sir.

Q. 117. Had there been any covering, such as rubber hose, around the beer-supply pipe, could that accident have happened?

A. No, sir.

Q. 118. Was this gas light which you speak of from the heat of which the beer-supply pipe was melted off the same gas light you have referred to before?

A. Yes, sir.

Q. 119. Have you a very distinct recollection of the melting of this beer-supply pipe and your discharge by reason thereof?

A. Well, I know that was what I was discharged for.

230 Q. 120. You remember that very distinctly, do you?

A. Yes, sir.

Q. 121. After being discharged in January, 1878, I understand you have testified that you were employed by Meinhard on special occasions, such as picnics, evenings, and Sundays; is that so?

A. Yes, sir.

Q. 122. You were so employed by him off and on until about the time he left Falls Field?

A. Until he moved to Germania hall, and I helped him a few imes over there, and then I stopped.

Q. 123. After January, 1878, and during the time you worked there off and on did you have occasion to go down into the lower ice box?

A. Yes, sir.

Q. 124. Why did you go down into the lower ice box?

A. I used to get beer up for the picnics.

Q. 125. And did you also have, on different occasions, to tap the beer?

A. Sometimes when they were short they would say to run down and tap a half of beer, and I would go down.

Q. 126. During the period from January, 1878, until Meinhard moved did you at different intervals see the beer-supply pipes in the cellar?

A. Yes, sir.

Q. 127. After January, 1878, was any change made in this beer drawing and cooling apparatus of Meinhard's?

231 A. No, sir.

Q. 128. Were the beer-supply pipes bare and uncovered the same as they were up to January, 1878?

A. Yes, sir.

Q. 129. And during all the time that you worked at Meinhard's, from the putting in of this beer cooling and drawing apparatus until Meinhard moved to Germania hall, was there any rubber pipes or anything else surrounding the beer-supply pipes from the upper to the lower ice box?

A. No, sir; the pipes were always bare.

Q. 130. During the period from January, 1878, until Meinhard moved was there any way for the ice water from the upper ice box to get into the lower ice box?

A. No, sir.

Q. 131. Or was there any passage from the upper to the lower ice box for air?

A. No, sir.

Q. 132. After you stopped working steadily for Meinhard in January, 1878, and thereafter worked for him occasionally do you know how they took the water out of the upper ice box?

A. They always had to dip it out.

Q. 133. You saw them do that repeatedly, did you?

A. Yes, sir.

Q. 135. Do you remember the occasion of Meinhard's removing from Falls Field to Germania hall?

232 A. I was working then for the Union bottling works, and Meinhard was then taking pop of the Union bottling works, and Mr. Klein told me to hitch up the big wagon and go over and draw a few loads of wood and stuff from the bar-room over to Germania hall from Falls Field, and I went over and took the big wagon and put on glasses and chairs and all the bar stuff and moved it over.

Q. 136. On this occausion when you helped Meinhard move to Germania hall did you see his beer cooling and drawing apparatus; and, if so, what was its condition?

A. The bar was laying over and the ice box was out, and the pipes were lying on the floor, and the lead pipes and the beer pump moved over there and the little ice box moved over in the Germania hall.

Q. 137. The ice box had been taken out?

A. Yes, sir; the small one.

Q. 138. And moved to Germania hall?

A. Yes, sir.

Q. 139. And the beer-supply pipes and fixtures lay on the floor?

A. Yes, sir.

Q. 140. Were the beer-supply pipes, as you saw them laying on the floor, covered or uncovered?

A. They were uncovered.

Q. 141. Was there any rubber hose or rubber pipe surrounding them?

A. No, sir.

233 Q. 142. Did you see any coils there, such as were in the bottom of the upper ice box, when you worked there in January, 1878?

A. They laid on the floor there.

Q. 143. The coils?

A. Yes, sir; the whole pipes were pulled right up.

Q. 144. After January, 1878, when you stopped working steadily for Meinhard, did you have occasion at different times to look into the upper ice box?

A. Yes, sir.

Q. 145. And did you after that time, to wit, January, 1878, dip the water out of the upper ice box?

A. The bartender used to do it and I used to go down and get a pail of ice up for him.

Q. 146. And on those occasions you would see into the upper ice box, would you?

A. Yes, sir.

Q. 147. Were the coils which you have spoken of as being in the bottom of the upper ice box prior to January, 1878, still there?

A. Yes, sir.

Q. 148. And did those coils remain there until the apparatus was taken out?

A. Yes, sir.

Q. 149. Examine the model which I now show you, marked "model of Meinhard apparatus," and state whether or not that represents the construction and arrangement of Meinhard's beer cooling and drawing apparatus.

234 A. That is the way the pipes ran. There is the wine-room; there is the gas burner we used to have lit, and that is where the pipes run over through the wine-room and slanted over into the ice box.

(Pointing to the model.)

Q. 150. Does this little bracket here on the model correctly represent the location of the gas jet?

A. Yes, sir.

Q. 151. And does that represent the gas jet the heat from which had the effect of melting the beer pipe?

A. Yes, sir.

Q. 152. Does this model correctly represent the location of the upper and the lower ice box?

A. Yes, sir.

Q. 153. Does this model correctly represent the course of the beer-supply pipes from the upper to the lower ice box?

A. Yes, sir.

Q. 154. As I understand you, at no time has any rubber hose or other covering surrounded the beer-supply pipes from the upper ice

box to the lower ice box, but that they were always bare, as represented by this model?

A. They were always bare; yes, sir.

Q. 155. Examine the model which I now show you, marked "Defendants' Exhibit Meinhard Apparatus Model," and state whether there was ever any rubber hose inclosing the beer-supply pipes, such as shown on this model.

A. No, sir; they never run that way.

235 Q. 156. The pipes didn't run as shown in this model?

A. No, sir.

Q. 157. How did they run?

A. They run in on this side over here (pointing to the side marked B).

Q. 158. Would that be on the side next to the wine cellar?

A. Yes, sir.

Q. 159. Were the beer-supply pipes at any time surrounded by rubber hose or pipe such as shown in this model?

A. No, sir (Defendants' Exhibit Meinhard Apparatus Model).

Q. 160. Could you plainly see the beer-supply pipes in the cellar and wine cellar as they passed from the upper to the lower ice box?

A. Yes, sir.

Q. 161. Had there been any connection or passage-way from the upper to the lower ice box so as to let the ice water from the upper ice box into the lower ice box, would you have known of it?

A. Yes, sir.

Cross-examination by Mr. SULLIVAN, counsel for the defendants:

X Q. 162. Is John V. Englert your brother?

A. Yes, sir.

X Q. 163. Are you the George J. Englert who made an affidavit in the case of Michael Magin, the complainant, against James D. McKay and others?

A. Yes, sir.

236 X Q. 164. Who first spoke to you about making that affidavit?

A. Mr. Schantz asked me about the affidavit on Saturday night.

X Q. 165. Where did he speak to you?

A. On St. Joseph street.

X Q. 166. Is that Otto Schantz?

A. Yes, sir.

X Q. 167. How long was that before you made this affidavit?

A. It was Saturday night before.

X Q. 168. Who was present at that conversation?

A. My wife and myself and Mr. Schantz.

X Q. 169. The conversation, then, was had at your house?

A. No, sir; on the street. I was going up street to do my trading.

X Q. 170. And did he go with you to your house?

A. No, sir.

X Q. 171. Did you have more than one conversation with Mr. Schantz before you made your affidavit?

A. No, sir.

X Q. 172. Then this conversation which you refer to was had on the street?

A. Yes, sir.

X Q. 173. What did he say to you about making this affidavit?

237 A. He stopped me and he says, "George, I want to see you." I says, "Here I am; what is it?" He says to me, "Do you remember when you worked for Meinhard?" I told him, "Yes;" and he says, "Do you know this apparatus?" and I told him, "Yes;" and he says, "Do you know how they were?" and I told him, "Yes;" and he asked me I should explain it to him, and he says, "Will you go with me to-morrow?" and I told him, "Yes." I would go with anybody on Sunday, but he never said what for, and he walked up Clinton street and I asked him where he wanted to go, and he said, "To Mike Magin's;" and we went down there and had a glass of beer, and Mr. Magin talked to me and he asked me if I knew anything about this, or asked me to explain to him how it was, and so I did; and he says, "Will you go with me to-morrow?" and I told him, "Yes;" and the next day I drove up to the place and went with Mr. Magin, and we went over to Mr. Cronise's office and then—I didn't know what for, and Mr. Cronise asked me all the questions and I answered them and I explained everything, and after I got through telling him everything he read it for me and I signed it, and that is all I knew about it.

X Q. 174. And you didn't know, when you were going to Mr. Cronise'- office, what you were there for?

A. No, sir.

X Q. 175. Did Mr. Magin tell you what he wanted you to go there for?

A. No, sir.

X Q. 176. Hadn't he spoken to you about the apparatus before going there?

238 A. He asked me how they were. He wanted me to go with him, but he didn't say where.

X Q. 177. Nor what for?

A. No, sir.

X Q. 178. Didn't Mr. Schantz tell you why he wanted you to go to Mr. Magin's?

A. No, sir; he didn't tell me where he was going until he got to Magin's saloon. He asked me to take a walk with him Sunday morning about eleven o'clock.

X Q. 179. He didn't tell you he was going to Mr. Magin's?

A. No, sir.

X Q. 180. And you didn't know he was going to Magin's until you reached there?

A. No, sir.

X Q. 181. Did Mr. Schantz introduce you to Mr. Magin?

A. No, sir; I knew him before.

X Q. 182. Had Mr. Magin spoken to you about this Meinhard apparatus before Mr. Schantz spoke to you?

A. No, sir.

X Q. 184. Did Mr. Schantz tell you Mr. Magin had a suit with the saloon-keepers and that he was beaten?

A. No, sir.

X Q. 185. Did Mr. Magin tell you anything about it?

A. No, sir.

X Q. 186. Did he tell you why he wanted this affidavit of yours?

239 A. No, sir.

X Q. 187. Didn't he tell you anything about it?

A. No, sir.

X Q. 188. Didn't he tell you what use he was going to make of your affidavit?

A. No, sir.

X Q. 189. When you went to Mr. Cronise's office was the affidavit prepared for you to sign?

A. No, sir.

X Q. 190. It was written out while you were there, was it?

A. As I explained it they wrote it down.

X Q. 191. And Mr. Magin went with you there?

A. Yes, sir.

X Q. 192. How long did it take?

A. Took about an hour and maybe a little over.

X Q. 193. Did Mr. Magin pay you for your time?

A. No, sir.

X Q. 194. Did he ever pay you anything?

A. No, sir.

X Q. 195. Who were you working for at that time?

A. I was working for the Rochester Brewing Company.

X Q. 196, Who are you working for now?

A. T. W. Galvin.

X Q. 197. What is his business?

A. Ginger ale.

240 Re-X Q. 198. Did Mr. Schantz tell you he had made an affidavit in this case?

A. No, sir.

Re-X Q. 199. Did he tell you any one else had made an affidavit?

A. No, sir.

Re-X Q. 200. Did he tell you anything about your brother knowing anything about this apparatus?

A. No, sir.

Re-X Q. 201. Or any person else?

A. No, sir.

Re-X Q. 202. How many affidavits did you make in this case?

A. One.

Re-X Q. 203. And that, you think, was made in Mr. Cronise'-office?

A. Yes, sir.

Re-X Q. 204. Are you older than your brother, John V. Englert?

A. No, sir.

Re-X Q. 205. Are you younger?

A. Yes, sir.

Re-X Q. 206. When did you first see this model, "Complainant's Exhibit Meinhard Apparatus"?

A. I saw it—I think it was about a week or two ago, when I was up here in this office.

Re-X Q. 207. In Mr. Selden's office?

A. Yes, sir.

241 Re-X Q. 208. Who showed it to you?

A. Mr. Bennett.

Re-X Q. 209. Who else was present?

A. Mr. Selden.

Re-X Q. 210. Any one else?

A. Mr. Magin, and there was a young man set there; I don't know who he was.

Re-X Q. 211. That was the first time you saw it, was it?

A. Yes, sir.

Re-X Q. 212. Who showed it to you?

A. Mr. Bennett.

Re-X Q. 213. What did he say about it?

A. He asked me — I knew this model and I told him it was the same as Meinhard's apparatus.

Re-X Q. 214. Did he describe it to *to?*

A. No, sir; I did to him.

Re-X Q. 215. He didn't have anything to say about describing it?

A. No, sir; I showed him all the points.

Re-X Q. 216. Do you know who made that model?

A. No, sir.

Re-X Q. 217. Who asked you to come here and look at that model?

A. Nobody.

Re-X Q. 218. How did you come up here?

A. I don't remember.

Re-X Q. 219. By whom?

A. By Mr. Magin.

242 Re-X Q. 220. And it was on that occasion that you examined this model?

A. No, sir.

Re-X Q. 221. Wasn't it on that occasion that you *ek*amined this model?

A. I was told to come here to go on the stand, and they asked me what I thought of this model and I told them.

Re-X Q. 222. It was on that occasion that you saw this model?

A. Yes, sir.

Re-X Q. 223. For the first time?

A. Yes, sir; it was here.

Re-X Q. 224. Was this model "Defendants' Exhibit Meinhard Apparatus" shown you at the same time?

A. No, sir.

Re-X Q. 225. They didn't call your attention to that?

A. No, sir.

Re-X Q. 226. Did they say anything about it?

A. No, sir.

Re-X Q. 227. Did you see it here at that time?

A. I didn't take notice.

Re-X Q. 228. The only model you examined at that time was this large one?

A. Yes, sir.

Re-X Q. 229. When did you first see this model "Defendants' Exhibit Meinhard Apparatus"?

A. A few minutes ago, when Mr. Bennett showed it to me.

243 Re-X Q. 230. While examining Complainant's Exhibit Meinhard Apparatus, was your attention called to these coolers inside of the upper ice box?

A. No, sir; I showed it to Mr. Bennet.

Re-X Q. 231. You showed him what?

A. I showed him the cooler what kept the beer cool.

Re-X Q. 232. Did you see coolers in the upper ice box in this model?

A. Yes, sir; I saw the coil. In this one here?

Re-X Q. 233. Yes.

A. I don't remember whether I did or not.

X Q. 234. Has the upper ice box in "Complainant's Exhibit Meinhard Apparatus" coolers in it?

A. I must look in and see.

X Q. 235. Did you notice any in that model when you examined it the first time?

A. Yes, sir.

X Q. 236. How many?

A. Three.

X Q. 237. Were they the same shape as the coolers which you saw in the apparatus in Meinhard's saloon?

A. I think Meinhard's were coiled.

X Q. 238. While you were examining this Complainant's Exhibit Meinhard Apparatus, what was said about the supply pipes not having rubber pipes over them?

A. By who?

X Q. 239. By either of you.

244 A. I told Mr. Bennett that that was just the way these pipes run. These pipes run the same as Mr. Meinhard's did. These pipes were bare.

X Q. 240. Did he ask you if the pipes were bare?

A. Yes, sir; and I told him yes.

X Q. 241. Did he also ask you if the pipes had rubber hose on them?

A. He asked me, and I told him no, sir.

X Q. 242. Did he tell you what Mr. Meinhard claimed?

A. No, sir.

X Q. 243. Didn't he tell you Mr. Meinhard claimed that the supply pipes had rubber hose ever them?

A. Yes, sir; he did say that and I told him they were bare.

X Q. 244. You told him that wasn't the case, didn't you?

A. Yes, sir; that the pipes were bare.

X Q. 245. Didn't Mr. Bennett also tell you that it was a very important thing in this case to show that the pipes didn't have a covering on them?

A. He didn't say nothing to me.

X Q. 246. Did he tell you that the defendants' witnesses had testified that the supply pipes had a rubber hose over them?

A. No, sir.

X Q. 247. You heard that the witnesses had so testified, hadn't you?

A. No, sir.

244½ X Q. 248. Were you working for Mr. Meinhard when this apparatus was put in his saloon?

A. Yes, sir.

X Q. 249. How long had you been working for him at that time?

A. I guess about a month steady. Before that I used to help out.

X Q. 250. And between working steadily and helping out how long had you been working for him before this apparatus was put in his saloon?

A. I helped out for about a year, and then he put in this beer pump.

X Q. 251. Before putting in this beer pump how did he draw his beer?

A. He used to have to draw these kegs up in the bar-room.

X Q. 252. He had a large ice box in the saloon, did he not?

A. Yes, sir.

X Q. 253. And in that large ice box he kept the beer?

A. Yes, sir; two kegs at a time.

X Q. 254. How long did he continue drawing beer from the keg in the saloon before he put this apparatus in?

A. About one year.

X Q. 255. And after he put this apparatus in did he discontinue drawing beer from the keg?

A. No, sir.

X Q. 256. Did he quit drawing beer from the keg after he put this apparatus in his saloon?

A. Yes, sir.

245 X Q. 257. And he continued using this apparatus until you left there, did he?

A. Yes, sir.

X Q. 258. And you quit working for him when?

A. In 1878 steady, and then helped him out until he moved.

X Q. 259. What do you mean by helping out?

A. Working nights and setting up nine-pins, and picnic nights tend bar and carry beer up in the hall and get ice for back of the bars, and do such work evenings and Sundays and concert nights.

X Q. 260. Whenever they had a rush of business you would go there and help them?

A. Yes, sir.

X Q. 261. Were there other young men helping at the same time?

A. Yes, sir.

X Q. 262. How many?

A. Forty sometimes; thirty or forty, according to the crowd; different picnics came there.

X Q. 263. Who was his bartender at this time, from 1877 to 1878?

A. Felix Guenther was one and George Englert was the next, the second one.

X Q. 264. George Englert is your brother?

A. No, sir; that is me.

X Q. 265. You were the assistant bartender?

A. Yes, sir; the second bartender.

246 X Q. 266. Before you commenced working with Mr. Meinhard what were you engaged in doing?

A. I was going to learn the carpenter trade.

X Q. 267. Who got you to go to Meinhard's?

A. Grafton & Siebert; I was working for them; they were the carpenter bosses, and they put up that building, and on Saturday night they had an opening there, and the building was finished and the band played, and we had some beer, and I started for a little beer-slinger, and got in with them and helped them out.

X Q. 268. That is the way you started to work for Gilbert & Meinhard?

A. Yes, sir.

X Q. 269. You hadn't known Gilbert & Meinhard before that time?

A. No, sir.

X Q. 270. Did you see Mr. Neuhart put this apparatus in there?

A. Yes, sir.

X Q. 271. Who helped him put it in?

A. Mr. Barr.

X Q. 272. Who else?

A. Myself; Mr. Meinhard was around, and Mr. Bartholomay and four or five more men.

X Q. 273. Were you a plumber?

A. No, sir; I used to hold the candle so they could see.

X Q. 274. Who assisted Mr. Barr?

A. I can't remember.

247 X Q. 275. How many plumbers were there?

A. Mr. Barr was one.

X Q. 276. And what other plumbers?

A. I don't remember; I don't believe there was any more.

X Q. 277. Who was Mr. Barr working for at this time?

A. I think he was in with Mr. Mutschler.

X Q. 278. Was Mr. Mutschler about there?

A. No, sir.

X Q. 279. How long did it take to put this apparatus in?

A. Two or three days.

X Q. 280. Do you know Mr. Cassebeer?

A. No, sir,

X Q. 281. Mr. Cassebeer, the plumber of this city, don't you know him?

A. Is that the one that has the hardware store at Central avenue?

X Q. 283. Do you know Mr. Schaub, a plumber of this city?

A. No, sir—oh, yes, I do; he was on Clifford street. He came over to Mr. Galvin's and did some work.

X Q. 284. Did you ever see him working about Mr. Meinhard's?

A. No, sir.

X Q. 285. Did you ever see any plumber working around Mr. Meinhard's?

A. I have seen Mr. Barr.

248 X Q. 286. Is he the only one?

A. Yes, sir; and he only worked there three days.

X Q. 287. That is the only time you ever saw him work there, was it?

A. Yes, sir. Mr. Meinhard used to do all his gas fixing and all that himself. He had a nice set of tools, and whatever was broke in the halls, and fixing pipes, Meinhard would do that himself.

X Q. 288. Did Mr. Meinhard repair this pipe which you say was burned off?

A. No, sir.

X Q. 289. Who repaired that?

A. I don't know.

X Q. 290. Do you know if it was ever repaired?

A. Yes, sir.

X Q. 291. By whom?

A. I don't know.

X Q. 292. Which of those pipes was melted on that occasion?

A. It was the second pipe—No. 2 pipe.

X Q. 293. The middle pipe, was it?

A. No, sir; the second one.

X Q. 294. How many pipes were there in the group?

A. Four.

X Q. 295. And what do you call the second one?

A. The second one from the end.

X Q. 296. Which end?

249 A. From the west end; the second pipe.

X Q. 297. The second pipe, counting the westerly pipe pipe No. 1?

A. Yes, sir.

X Q. 298. Pipe No. 2 from the west end of the box?

A. Yes, sir.

X Q. 299. And there were four pipes in the group at the time?

A. Yes, sir.

X Q. 300. How near were these pipes to each other?

A. Do you mean on the inside going down or the outside?

X Q. 301. I mean where this pipe which you said was burned off.

A. How far apart do you mean? They may have been an inch or half an inch. I never measured them.

X Q. 302. More than one pipe burned?

A. No, sir.

X Q. 303. Only one melted on that occasion?

A. Yes, sir.

X Q. 304. And when the pipe melted you say the beer flew all over you?

A. It did. The pipe was empty, and when I turned on the beer, onto the pipe, then she flew.

X Q. 305. And then you run?

A. No, sir; I run back in the ice box to shut off the faucet and Mr. Meinhard heard it and came down-stairs.

250 X Q. 306. Did any one else hear it?

A. I don't remember.

X Q. 307. Any one else come to your assistance besides Mr. Meinhard?

A. Mr. Guenther.

X Q. 308. He came to your assistance?

A. Yes, sir.

X Q. 309. What did he do?

A. I don't know. I was so excited I didn't know what to do and I got my coat and had to go.

X Q. 310. How much beer did you waste on that occasion?

A. There may have been a gallon or two. I didn't measure it.

X Q. 311. You say it flew all over your clothes?

A. Yes, sir.

X Q. 312. Any one else but Mr. Guenther and Mr. Meinhard come to your rescue?

A. No, sir.

X Q. 313. You didn't call out for any person, did you?

A. No, sir.

X Q. 314. They heard the noise and rushed down-stairs?

A. They heard the squirting.

X Q. 315. Have you ever spoken to any person about this pipe burning from that time to the present time?

A. No, sir; I told my mother what I was discharged for at that time.

251 X Q. 316. You did tell your mother?

A. Yes, sir.

X Q. 317. Is your mother yet living?

A. Yes, sir.

X Q. 318. Does she remember it?

A. I don't know. I never asked her.

X Q. 319. Aside from your mother, did you ever tell any person about this pipe burning until you have told it here to-day?

A. No, sir.

X Q. 320. Did you ever tell your brother about it?

A. No, sir.

X Q. 321. Did you ever tell Mr. Magin about it?

A. Yes, sir.

X Q. 322. Where did you tell him?

A. In Mr. Cronise's office.

X Q. 323. Did you ever tell Mr. Schantz about it?

A. No, sir.

X Q. 324. Did you ever tell Mr. Bennett about it?
A. Yes, sir.
X Q. 325. Where?
A. In that office.
X Q. 326. When?
A. Two weeks ago.
X Q. 327. What did you tell him about it?
252 A. I told him what I had done. He asked what I quit for and I told him I was discharged, and he wanted to know what for and I told him.
X Q. 328. Anybody present when you told Mr. Bennett this?
A. Mr. Magin and, I think, Mr. Gordon and Mr. Selden and another man; I don't know who he was.
X Q. 329. You told him this while talking about this apparatus, did you?
A. While I was explaining it.
X Q. 330. Was that the occasion that you came here with Mr. Magin?
A. I was subpœnaed to come here.
X Q. 331. And you had this talk with Mr. Bennett and Mr. Magin at that time?
A. Yes, sir.
X Q. 332. You were not examined that day, were you?
A. No, sir.
X Q. 333. You came here in the forenoon, did you?
A. No, sir.
X Q. 334. Did you come here in the afternoon?
A. Yes, sir.
X Q. 335. Did you come here alone?
A. Yes, sir.
X Q. 336. Who requested you to come here?
A. Mr. Magin.
253 X Q. 337. What was the size of that upper ice box in this apparatus?
A. It may have been two and a half or three feet high and square or two feet square. I never measured it.
X Q. 338. What was the size of the lower ice box?
A. It may have been 12 to 15 feet square. I never measured the boxes.
X Q. 339. Did you think the upper ice box was about square?
A. It was three feet or three feet and a half high and two feet square.
X Q. 340. And was the lower ice box square?
A. No, sir; it must have been 12 x 15. It was only one way, and it must have been 15 feet long and 12 feet square.
X Q. 341. You mean 15 feet long and 12 feet deep, I suppose?
A. Yes, sir.
X Q. 342. And 12 feet high?
A. No, sir.
X Q. 343. It wasn't as high as that?
A. No, sir.

X Q. 344. Was the upper ice box directly over the lower ice box?
A. No, sir.
X Q. 345. The upper ice box was in the saloon proper, was it not?
A. Yes, sir; back of the bar.
X Q. 346. Was the lower ice box built against the south wall of the cellar?
254 A. Against the south and west; yes, sir.
X Q. 347. It extended up to the west wall also, did it?
A. Yes, sir.
X Q. 348. And did it extend back to the south wall?
A. Yes, sir.
X Q. 349. And do you think it extended east from the west wall about 15 feet?
A. Yes, sir.
X Q. 350. And then did the wine-room begin at the east end of this lower ice box?
A. Yes, sir.
X Q. 351. And extended east how far?
A. Say 15 feet.
X Q. 352. Did it extend to the east wall of the cellar?
A. Yes, sir.
X Q. 353. And did the wine-room extend to the ceiling?
A. Yes, sir.
X Q. 354. And did the ice box also extend to the ceiling?
A. Yes, sir.
X Q. 355. Whereabouts in the wine-room was the door?
A. Under the steps.
X Q. 356. Was that about the middle of the wine-room?
A. No, sir; a little further towards the west.
255 X Q. 357. How large a door was it?
A. About eight or nine feet high and three feet square.
X Q. 358. You mean three feet wide?
A. Yes, sir; something like that. I never measured it.
X Q. 359. How far west from the middle of this wine-room was this door located?
A. About six or seven feet.
X Q. 360. Whereabouts in the lower ice box was its door?
A. It was on the east and north corner, or very near to the corner.
X Q. 361. And which way did it swing?
A. The door swung to the west.
X Q. 362. And which way did the wine-room door swing?
A. To the west.
X Q. 363. So both doors swung to the west, did they?
A. Yes, sir.
X Q. 364. Did they have a thumb latch on each door?
A. The wine-room had a key, and that used to hang back of the bar.
X Q. 365. How was it with the ice box?
A. After it was shut it staid shut; we never locked it.
X Q. 366. Did it have a catch on it?

A. Yes, sir.

X Q. 367. It didn't have a knob, then, on the door?

256 A. No, sir; I can't remember if it had a knob on it, or whatever you call it.

X Q. 368. Did it have a thumb latch?

A. No, sir; it didn't have any on.

X Q. 369. The only fastening to the door of the wine cellar, then, was with a key?

A. Yes, sir.

X Q. 370. Was this lower ice box lined?

A. Yes, sir.

X Q. 371. What with?

A. Wood.

X Q. 372. Do you mean by that that it was made of wood?

A. It was built of wood and packed inside.

X Q. 373. It had no lining aside from the material of which it was made?

A. That was all. There was a wooden box and between that there was sawdust; a double box.

X Q. 374. It had no zinc lining, then?

A. I can't remember. It was a double box.

X Q. 375. It was filled, was it?

A. Yes, sir.

X Q. 376. Was the upper ice box lined?

A. It was lined where the coils were; the tank.

X Q. 377. What kind of lining was that?

A. Galvanized iron.

X Q. 378. The bottom of the box was lined, then?

A. No, sir.

257 X Q. 379. Were the sides lined?

A. No, sir.

X Q. 380. Was it a filled box?

A. It was a common box, and above it was a regular tank.

X Q. 381. What was kept in the bottom of the upper ice box?

A. We used to have some of these earthen jugs full of cider and put them in there to set them out of the way.

X Q. 382. Did you keep pop and a little cheese in there, too?

A. We used to keep them in the other box where the beer used to be tapped in.

X Q. 383. That was the old ice box?

A. Yes, sir.

X Q. 384. And all you kept in the cupboard of the ice box was brown jugs?

A. Yes, sir.

X Q. 385. Did it have any shelves?

A. No, sir.

X Q. 386. How many shelves in the lower ice box?

A. Three.

X Q. 387. And those shelves were used for the purpose of placing ice upon them?

A. Yes, sir.

X Q. 388. Was one shelf above the other?

A. No, sir.

X Q. 389. One on each side of the box?

258 A. There was one on the west end and one on the south end and one on the east end, and on the north end there wasn't any. That was where the door was.

X Q. 390. How high from the bottom of the ice box were the shelves placed?

A. It may have been four or five feet or six.

X Q. 391. Was there anything else fastened to the lower ice box but these shelves?

A. No, sir.

X Q. 392. How were these shelves fastened?

A. I suppose was a strip on each end and a board laying across, and from that one another running across and on the back end there was a rack made.

X Q. 393. Did you ever examine to see how they were fastened?

A. Yes, sir; and I nailed one up one time because it broke down.

X Q. 394. Broke down from the weight of the ice.

A. Yes, sir; the nails from the wooden bracket gave out. They rusted and I put another strip on.

X Q. 395. Did this lower ice box have an open floor in it?

A. It had a rack in. It was a floor and then a rack on it.

X Q. 396. Whereabouts in the lower ice box were the kegs of beer placed which were tapped?

A. On the east side.

X Q. 397. Were they placed on a line east and west?

259 A. Yes, sir; just east.

X Q. 398. Did the kegs run east and west or north and south?

A. North and south. The rack run north and south, and the kegs lay east and west.

X Q. 399. The kegs which were tapped stood on their ends?

A. No, sir; they laid on the rack.

X Q. 400. Do I understand you to say the kegs which were tapped laid on the rack?

A. Yes, sir.

X Q. 401. Which rack?

A. In the ice box, on the bottom.

X Q. 402. The rack in the bottom of the ice box?

A. No, sir; there was a rack so you wouldn't get wet feet by going into the ice box, and then there was a rack about that high and used to lay the kegs on it in that way and knock the faucet in in front and put the coupling on that faucet.

X Q. 403. And that rack laid north and south in the ice box, did it not?

A. Yes, sir.

X Q. 404. And the kegs lay east and west?

A. Yes, sir.

X Q. 405. And you would tap the west end of the kegs, would you?

A. The faucet would look to the west.

X Q. 406. And you would tap the west end of the kegs, wouldn't you?

A. Yes, sir.

260 X Q. 407. What was the length of these beer-supply pipes?

A. From the upper to the bottom?

X Q. 408. Yes.

A. They may have been 8 or 9 or 10 feet. I never measured them.

X Q. 409. What were they made of?

A. Lead, I think.

X Q. 410. Were they lined?

A. I don't know; I never made any.

X Q. 411. You never made any and you didn't examine them to see if they were lined, did you?

A. No, sir.

X Q. 412. How many of them were there?

A. Four.

X Q. 413. Were they all used for lager beer?

A. Yes, sir.

X Q. 414. None used for ordinary beer?

A. One was used for this Pilsner Cincinnati beer, the light beer, before they had this Bohemian, and then two would run with common beer.

X Q. 415. What was the other used for?

A. If one was empty they would hook on the next one and give one a chance to be washed out.

X Q. 416. Did you ever clean this apparatus?

A. Yes, sir.

X Q. 417. Did you clean the pipes?

A. Yes, sir; on the inside.

261 X Q. 418. How often?

A. Once a week.

X Q. 419. Anybody assist you?

A. No, sir.

X Q. 420. Did you do it alone?

A. Yes, sir.

X Q. 421. Who was bartender at that time?

A. Felix Guenther.

X Q. 422. What was the length of these coils?

A. Do you mean where they were coiled, how long?

X Q. 423. How many feet of pipe was in each coil?

A. I don't know; I never measured them.

X Q. 424. Were the coils part of the supply pipes?

A. Yes, sir.

X Q. 425. What was the length of these rubber hose at the lower end of the supply pipes?

A. They may have been 3 or 4 feet; I don't remember.

X Q. 526. What size were they?

A. They were half inch and three-quarters; half inch on the in-

side and three quarters on the outside. They fit over this lead pipe. I never measured them.

X Q. 427. How did you clean out these beer-supply pipes?

A. I used to take an old eighth, an old keg or an eighth, and fill it up with hot water and put in 4 or 5 pounds of washing
262 soda and go down and knock the faucet in and blow it up through, and after that was blowed through I would put the hose on above and wash it down with cold water and that would be clean. That was the way Mr. Meinhard showed me to wash it.

X Q. 428. How often did you do that?

A. Once a week.

X Q. 429. Anybody see you do that?

A. Mr. Meinhard and Mr. Guenther.

X Q. 430. Anybody else?

A. Not in my time. If they did I don't remember.

X Q. 431. In blowing the water down you would attach the hose to the faucet upstairs, would you?

A. Yes, sir.

X Q. 432. And turn on the water?

A. Yes, sir.

X Q. 433. Was there a coupling at the end of the hose upstairs?

A. No, sir.

X Q. 434. How would you fasten the hose to the faucet?

A. We had a short piece of hose that run from the bar across, and it may have been that length—about 3 feet—and it may have been a little over, and slipped it upon the faucet there and over here, and turned it on and let the water run down through.

X Q. 435. Could you do that work without any assistance?

A. Yes, sir.

263 X Q. 436. You would fasten the hose onto the faucet, then, before you would turn on the water, would you?

A. Yes, sir.

X Q. 437. And after fastening the hose to the faucet you would turn on the water?

A. Yes, sir.

X Q. 438. Whereabouts was the water pressure?

A. Right opposite; right here in the bar.

X Q. 439. It was inside of the bar, was it?

A. Yes, sir.

X Q. 440. Was this the way Mr. Meinhard told you to clean out this apparatus?

A. Yes, sir.

X Q. 441. And you were acting under his instructions, were you?

A. Yes, sir.

X Q. 442. Did Mr. Gilbert ever tell you how to clean the apparatus?

A. No, sir.

X Q. 443. Mr. Meinhard had charge of that?

A. Yes, sir.

X Q. 444. Did you see any person else clean out this apparatus while you were working at Mr. Meinhard's?

A. No, sir.

X Q. 445. What was the depth of the cupboard below the upper ice box?

A. About a foot and a half.

264 X Q. 446. That is, a foot and a half east and west?

A. Do you mean the cupboard from the floor where the tank was?

X Q. 447. Yes.

A. About a foot and a half.

X Q. 448. About a foot and a half from the floor of the saloon to the bottom of the upper ice box?

A. Yes, sir; of the tank.

X Q. 449. And how wide east and west was it?

A. It may have been two feet.

X Q. 450. The cupboard was the same width that the tank was, was it not?

A. Yes, sir.

X Q. 451. Do you know who put in that upper ice box?

A. No, sir.

X Q. 452. It was there when you commenced working for Mr. Meinhard, was it?

A. No, sir.

X Q. 453. It was put in there after you commenced working there?

A. Yes, sir; while I was working there.

X Q. 454. But who put it in you don't know?

A. Mr. Barr and Mr. Neuhart put in the faucet and stuff, and who put the cupboard—the carpenter—I don't know.

X Q. 456. Did the carpenter who put in the upper ice box also put in the lower ice box?

A. I don't know. I can't remember.

265 X Q. 457. Do you recollect whether the lower ice box was put up before the upper ice box?

A. It was put up at the same time.

X Q. 458. And by some carpenter?

A. I don't remember.

X Q. 459. What was the size of the hole in the lower ice box through which these supply pipes ran?

A. It might have been four or five inches. I never measured it.

X Q. 460. Was it a square hole?

A. No, sir.

X Q. 461. Give the dimensions of the hole.

A. I forget now how that hole was. I think it was a round hole.

X Q. 462. Was there more than one hole for the supply pipes to run through?

A. No, sir.

X Q. 463. What do you mean by a round hole?

A. I don't mean a square one; a round one.

X Q. 464. You think this hole, then, was in the form of a stove-pipe hole, do you?

A. Well, it was a hole; yes, sir.

X Q. 465. And are you certain it was a round hole?

A. I wouldn't swear if it was round or not, but it was something that way.

X Q. 466. As near as you can recollect it was a round hole, was it?

A. I am a poor judge on holes.

X Q. 467. Don't you think it was a square hole?

266 A. No, sir; I think it was a round hole.

X Q. 468. But the size of it you can't state?

A. It may have been four or five inches.

X Q. 469. Four or five inches in diameter?

A. I think so; about that across.

X Q. 470. Was the hole in the saloon floor the same shape?

A. I don't know. I can't remember. No; that was a little square hole.

X Q. 471. What was the size of that?

A. It may have been four inches long and an inch in width.

X Q. 472. You say it was four inches long; which way, east and west or north and south?

A. East and west.

X Q. 473. Then it was an inch north and south?

A. Yes, sir.

X Q. 474. How far from the top of this lower ice box was this hole through which these supply pipes ran?

A. About a foot and a half from the tank down.

X Q. 475. The question repeated.

A. If this is the tank here, about a foot and a half down where this hole was in the floor.

X Q. 476. I have reference to the lower ice box and not the upper ice box.

A. I thought you meant the upper ice box and not the lower.

X Q. 477. Now that you understand that I meant the lower ice box, you will please answer my question. (Question repeated.)

267 A. About four feet from the ceiling; three or four. I never measured it.

X Q. 478. And after the supply pipes entered the lower ice box what direction did they take?

A. They run in over the shelf.

X Q. 479. Over the shelf on which the ice was placed?

A. Yes, sir.

X Q. 480. And did they run on top of the ice cakes?

A. Yes, sir; there would be a piece of ice on each side of it.

X Q. 481. Then I understand you to say they ran between the cakes of ice?

A. Yes, sir; ran right through.

X Q. 482. Was there anything else fastened to these beer kegs in the lower ice box but this beer-supply pipe?

A. The gas or pressure.

X Q. 483. Anything else besides the pressure?

A. No, sir.

X Q. 484. Did these pressure pipes run through the same opening that the beer-supply pipes did?

A. I don't remember whether they did or not.

X Q. 485. What is your best recollection in regard to that?

A. No, sir; I think they came in at the top.

X Q. 486. Whereabouts in the top did they come in?

A. In the northeast corner; one pipe.

X Q. 487. And whereabouts did it go through the cellar floor?

268 A. Under the bar.

X Q. 488. Was that also a lead pipe?

A. No, sir; that was an iron pipe.

X Q. 489. Don't you recollect that that pipe ran into the same hole that the beer-supply pipes did?

A. No, sir.

X Q. 490. What was the size of that pipe?

A. I think it was three-quarters of an inch or an inch; I never measured it.

X Q. 491. Did you ever have occasion to remove that pipe?

A. No, sir.

X Q. 492. Did you notice a waste pipe from the upper to the lower ice box?

A. Yes, sir.

X Q. 493. Whereabouts did that enter the ice box?

A. Did I notice what?

X Q. 494. A waste pipe from the upper to the lower ice box.

A. No, sir; I never seen any.

X Q. 495. Why did you say "yes" before?

A. I thought you meant from the rinsing water at the bar, the waste pipe.

X Q. 496. There was a waste pipe running for the rinsing water, then?

A. Yes, sir.

X Q. 497. Where did that pipe run?

A. Right down straight into the cellar.

269 X Q. 498. It didn't run into the lower ice box, then?

A. No, sir.

X Q. 499. Whereabouts in the cellar were the water pipes?

A. I don't remember.

X Q. 500. Do you know where the gas pipes were?

A. Yes, sir.

X Q. 501. Whereabouts were they?

A. The gas meter was in the east south corner of the cellar, at the wine-room.

X Q. 502. In the wine-room, was it?

A. I forgot now; I think they were.

X Q. 503. You think inside of the wine-room?

A. In the corner; the wine-room slanted off to the meter.

X Q. 504. How many gas pipes were in the cellar?

A. I don't know.

X Q. 505. Did the gas and water pipes run parallel with each other?

A. I don't know.

X Q. 506. Did they run along the front of the wine cellar?

A. They run along the ceiling.

X Q. 507. In the cellar?

A. Yes, sir.

X Q. 508. Did they also run along the front of the large ice box in the cellar?

270 A. The water pipe did.

X Q. 509. And did not the gas pipe?

A. The gas pipe run up to the burner there, and from there it went up through the building.

X Q. 510. It didn't extend along in front of the large ice box, then?

A. Not quite up to it; no, sir. They run all ways through the cellar—those pipes.

X Q. 511. They run in all directions?

A. Yes, sir; and especially back to the summer garden and the hall.

X Q. 512. You had a great many pipes running through the cellar, didn't you?

A. Only the gas and water.

X Q. 513. How many pipes altogether?

A. One for gas and one for water, but they run in different ways.

X Q. 514. What do you mean by "in different ways?"

A. Some run over and went up the wall for the hallway upstairs, one to the summer garden, and another in another way for the bowling alley and they would branch off.

X Q. 515. Did you ever examine the inside of this coil in the upper ice box?

A. I used to see it when I would dip the water out; I would see the coil.

X Q. 516. I asked you if you ever examined the inside of the coil.

A. No, sir.

X Q. 517. You never had occasion to take the coil out?

271 A. No, sir.

X Q. 518. Were one of these coils raised on top of the other?

A. No, sir; side by side.

X Q. 519. Each supply pipe had its own separate coil?

A. Yes, sir.

X Q. 520. How many times a week did you have occasion to dip water out of the upper ice box?

A. About three times a day.

X Q. 521. Morning, noon, and night?

A. Yes, sir.

X Q. 522. Were you told to do that always before you went to your meals?

A. Yes, sir.

X Q. 523. Before or after your meals?

A. Before I went to my meals.

X Q. 524. That was understood, was it, that you were to do that work before you went?

A. Yes, sir.

X Q. 525. Who told you to do that?

A. Mr. Meinhard.

X Q. 526. What quantity of water did you take out usually?

A. Would take out a pail in the morning and put in two pails of ice and sometimes more. What was in there I used to take out.

X Q. 527. Did you keep anything else in the upper ice box but ice?

A. No, sir.

272 X Q. 528. You didn't keep any ginger ale or ginger pop?

A. I did not.

X Q. 529. Do you know if the bartender kept any?

A. No, sir.

X Q. 530. You never saw any there, did you?

A. No, sir.

X Q. 531. Did you ever see them pull out these beer-supply pipes in order to clean them?

A. No, sir.

X Q. 532. I understand you to say you never examined the bottom of this upper ice box?

A. I never examined it, only I have seen the pipes and the coil in there when I would dip the water out.

X Q. 533. But you never took these coils out?

A. You couldn't take them out.

X Q. 534. So what was in the bottom of the upper ice box you don't know?

A. There was a little cupboard from the tank to the bar-room floor.

X Q. 535. But I understand you to say you never examined the bottom of the upper ice box—the tank part of it?

A. I never examined it, but I used to dip the water out and see the pipes there. That was all the examination.

X Q. 536. You didn't examine it, then, below the pipes?

A. Between the pipes and tank?

X Q. 537. Yes, sir.

273 A. No, sir.

X Q. 538. So you don't know what was below the pipes?

A. Below the pipes was the galvanized bottom. The tank was below the pipes.

X Q. 539. Do you think that was lined?

A. Yes, sir.

X Q. 540. With what?

A. Galvanized iron, the tank was.

X Q. 541. Did you examine it?

A. I have seen it.

X Q. 542. Were the sides lined?

A. Yes, sir.

X Q. 543. The sides were lined with the same material as the bottom?

A. Yes, sir.

X Q. 544. You are certain of that, are you?

A. Yes, sir; I am certain of that.

X Q. 545. Where these beer-supply pipes went through the bottom of the upper ice box, did they go straight down or did they bend up goose-neck fashion?

A. When they left that tank they went down straight and slanted to the wine-room and went in the lower ice box.

X Q. 546. Before leaving the tank what shape were the supply pipes?

A. Straight down through the floor.

X Q. 547. There was no bend in the pipes, then, between the end of the coil and where the pipes went through the bottom of the ice box?

274 A. No, sir.

X Q. 548. It was a separate pipe?

A. Yes, sir.

X Q. 549. Did you notice any little tin pipes in the bottom of the upper ice box?

A. No, sir.

X Q. 550. Were there any little tin tubes there?

A. No, sir. There were four lead pipes; the beer-supply pipes were all that was there.

X Q. 551. Whereabouts in the bar was this pail kept which used to carry away the water from the upper ice box?

A. Under the bar.

X Q. 552. Was it kept under the bar or in this cupboard?

A. Under the bar.

X Q. 553. Did you have more pails there than one?

A. We had two of them.

X Q. 554. After the pipes left the upper ice box, did they run in a group into the lower ice box?

A. From the upper tank they run down through the floor straight and slanted over through the wine-room and went into the lower ice box.

X Q. 555. What distance was it from where they left the upper ice box until they entered the lower ice box?

A. It might have been seven or eight or nine feet. I never measured it.

275 X Q. 556. Did you notice that they ran between joists on their way to the lower ice box?

A. Not as I know of. They came down straight and slanted over.

X Q. 557. Do you know which way the joist in the cellar ran?

A. Yes, sir.

X Q. 558. Which way?

A. They run from the north to the south.

X Q. 559. They run north and south, then?

A. Yes, sir.

X Q. 560. And the supply pipes in passing through the cellar

floor and into the lower ice box, wouldn't they run between those joists?

A. Yes, sir. They would have to come down between two joists.

X Q. 561 What was the depth of those joist-?

A. They may have been a foot or eight inches or ten inches.

X Q. 562. Do I understand you to say that the pipes, after they left the upper ice box, ran in a southerly direction into the lower ice box?

A. After they left the upper ice box from the tank they came down straight through the floor and slanted through the wine-room and went into the ice box.

X Q. 563 I asked you in what direction did the pipes slant from the time they left the upper ice box until they entered the lower ice box.

Complainant's counsel objected upon the ground that the witness had just explained the exact course that the pipes took from
276 the upper to the lower ice box, and if the counsel wants anything further he must make his questions so they may be understood.

A. They came down like this——

X Q. 564. I asked you to state whether they ran east and west or north and south.

A. They run from the floor and slanted—that was in the center of the cellar—and slanted southwest.

X Q. 565. And into the lower ice box?

A. Yes, sir.

X Q. 566. And after they entered the lower ice box, what direction did they take?

A. They ran to the west, to the east shelf.

X Q. 567. When they reached the shelf, what direction did they take?

A. They stopped. Then the hose was on there and then they went down straight, the hose, to couple on the faucets, the east shelf of that box.

X Q. 568. Didn't some of the pipes take a southerly direction after entering the lower ice box?

A. When they came to the end of the shelf they stuck out maybe three or four inches.

X Q. 569. What direction did they take then?

A. How do you mean?

X Q. 570. After the supply pipes entered the lower ice box what direction did they take?

A. They rested on the east shelf and stuck out about four or five inches, and the hose was coupled on there, or wired on, and
277 below that east shelf the beer was tapped and run down to the faucets.

X Q. 571. Then I understand you that the supply pipes, as soon as they entered the lower ice box, rested on a shelf?

A. They came and slanted right over onto the shelf; yes, sir.

X Q. 572. How near was the shelf to the hole where the supply pipes entered?

A. Maybe half a foot lower than the hole.

X Q. 573. How much of the lead pipes was to be seen in the lower ice box?

A. Maybe a foot and a half or two feet.

X Q. 574. And the rest of the supply pipe, then, was made up of rubber hose?

A. Yes, sir.

X Q. 575. How much of these lead supply pipes rested on the shelf?

A. There didn't any rest, only it run up; it run through the hole and just the end rested on the shelf.

X Q. 576. It rested on the edge of the shelf, did it?

A. Yes, sir.

X Q. 577. And how far below the shelf did this lead pipe extend?

A. Four or five inches.

X Q. 578. And then the rubber hose was attached to it?

A. Yes, sir.

X Q. 579. Were all these supply pipes similarly located?

278 A. On the side of each other; yes, sir.

X Q. 580. Did this air pipe described by you go directly to the beer keg?

A. No, sir; it run in and then had a rubber hose, a small rubber hose.

X Q. 581. That also had a rubber hose attached to it, did it?

A. Yes, sir.

X Q. 582. Did that rubber hose run to the beer keg?

A. There were four rubber hose.

X Q. 583. There were four rubber hose attached to the pipe?

A. The pipe had four small faucets on and each one had a small rubber hose and on the end of the hose was a vent, and all we had to do was to knock that vent in.

X Q. 584. And there were four rubber hose, then, attached to this air pipe which you speak of?

A. Yes, sir.

X Q. 585. And each rubber hose ran to the beer keg?

—. Yes, sir; for pressure.

X Q. 586. And when you wanted pressure on any particular keg all you had to do was to open the cock and on comes the pressure?

A. Yes, sir.

X Q. 587. And up went the beer?

A. Yes, sir.

X Q. 588. Who put that air pipe there?

279 A. The plumber.

X Q. 589. It was put in at the same time the apparatus was put in, was it?

A. Yes, sir.

X Q. 590. Whereabouts did that air pipe enter the lower ice box?

A. At the northeast corner.

X Q. 591. At the same end that the beer-supply pipes entered?
A. Yes, sir; but not so low down.
X Q. 592. It was nearer the ceiling?
A. Yes, sir.
X Q. 593. And what direction did it take when it entered the lower ice box?
A. It ran from the north to the south.
X Q. 594. Did it enter about the center of the box?
A. Where the pipe came in?
X Q. 595. Yes.
A. No; at the northeast corner, near the corner.
X Q. 596. But after it entered it took a southerly direction, did it?
A. Yes, sir; it run from the north to the south. There were four little faucets on that.
X Q. 597. Did it extend below the shelf?
A. Above the shelf.
X Q. 598. And the rubber hose, then, extended also above the shelf, did it?
A. Yes, sir.
280 X Q. 599. Did that pipe remain there during the time you worked for Mr. Meinhard?
A. Yes, sir.
X Q. 600. No change made in it?
A. No, sir; the only change there was they cut off the vents and set them back further, where they would wear out by hitting them with the mallet. I used to change them myself.
X Q. 601. You used to change the vents, you say?
A. Yes, sir.
X Q. 602. What were the vents made out of?
A. I guess iron.
X Q. 603. Do you mean by the vents little cocks?
A. No, sir.
X Q. 604. They had vents as well as cocks, did they?
A. A vent is where you hammer it in in the top and the air goes in to the beer.
X Q. 605. That is the vent which went into the keg?
A. Yes, sir.
X Q. 606. And those you had to change occasionally as the old ones wore out?
A. The old ones never wore out, but sometimes we would hit the rubber and cut it.
X Q. 607. And then you would have to supply new ones?
A. No, sir; only cut off the end and set it back a little.
281 X Q. 608. That is, you would have to cut off the end of the rubber hose?
A. Yes, sir.

Redirect examination by Mr. BENNETT, counsel for complainant:

Re-D. Q. 609. Was the pressure applied at the bung of the keg?
A. Yes, sir.
Re-D. Q. 610. Where was the pressure pump located?
A. Under the bar.
Re-D. Q. 611. When the walking-beam pump was taken out and the other pump put in was that located in the same place?
A. Yes, sir.
Re-D. Q. 612. There was, as I understand, one pressure pipe leading from the pump down into the ice box?
A. Yes, sir.
Re-D. Q. 613. From which pipe there was connections for the four rubber tubes?
A. Yes, sir.
Re-D. Q. 614. So as to supply pressure to four barrels at once, if desired?
A. Yes, sir.
Re-D. Q. 615. The gas meter, where was that located?
A. In the southeast corner, right at the end of the wine-room.
Re-D. Q. 616. It was just outside and at the end of the wine-room, was it?
282 A. Yes, sir.
Re-D. Q. 617. And the partition of the wine-room slanted so as to make a space for it?
A. Yes, sir.
Re-D. Q. 618. How far did the beer-supply pipes extend out from the edge of the ice shelf in the lower ice box?
A. About four or five inches.
Re-D. Q. 619. And how deep were those ice shelves?
A. They were about four or five feet from about the center of the box.
Re-D. Q. 620. You mean they were four or five feet up from the floor?
A. Yes, sir.
Re-D. Q. 621. How deep were the shelves—how broad?
A. They may have been a foot or fourteen inches.
Re-D. Q. 622. And onto the end of each one of these pipes was wired the rubber connection that went to the beer faucet?
A. Yes, sir.
Re-D. 623. And was there a rubber connection for each beer-supply pipe and for each keg of beer?
A. Yes, sir.
Re-D. 624. You have stated that the joists in the cellar ran north and south and that the beer-supply pipes came down between the two joists. How far below the joists did they extend?
283 A. They came right down and slanted over through the wine-room and slanted in the ice box.
Re-D. Q. 625. And how far below the joists did the pipes run before they slanted into the wine cellar and then into the ice box?

A. Four or five or six inches, and then slanted over.

Re-D. Q. 626. Slanting through the corner of the wine cellar?

A. Yes, sir.

Re-D. Q. 627. And then into the hole inside of the ice box?

A. Yes, sir.

Re-D. Q. 628. How far from the end was this hole in the ice box through which the beer-supply pipes went?

A. About three feet from the corner.

Re-D. Q. 629. That is, from the northeast corner?

A. Yes, sir; from the northeast corner.

Re-D. Q. 630. And the beer-supply pipes, after coming straight through the floor and extending below the joists, took a southwesterly course into the wine cellar, did they?

A. Yes, sir.

Re-D. Q. 631. What you have termed the tank in the upper ice box is that which contained the coils of pipe and where the ice was placed, was it not?

A. That was to hold the ice water and ice and keep it from running all over.

Re-D. Q. 632. And the bottom of this tank was galvanized iron, do you say?

284 A. Yes, sir.

Re-D. Q. 633. And the sides of the same material?

A. Yes, sir.

Re-D. Q. 634. And was it water-tight?

A. Yes, sir; to hold the ice water.

Re-D. Q. 635. And did the coils rest upon this galvanized bottom?

A. Yes, sir.

Re-D. Q. 636. Then when you put the ice on the ice was put on the bottom and spread over the box?

A. Yes, sir; filled up the whole box with chips of ice.

Re-D. Q. 637. And underneath the bottom of this tank was the cupboard, was it?

A. Yes, sir.

Re-D. Q. 638. How many wraps of pipe composed each coil?

A. How many times they run around?

Re-D. Q. 639. Yes.

A. They may run around three or four times.

Re-D. Q. 640. And then went straight to the faucet?

A. Yes, sir; came up straight to the faucet.

Re-D. Q. 641. Did you ever see any one take these coils out for any purpose?

A. No, sir; would have to pull the whole thing apart to take them out.

Re-D. Q. 642. They were securely fastened in, were they?

285 A. Yes, sir.

Re-D. Q. 643. And were these coils formed by bending a portion of the beer-supply pipes?

A. They were bent; they were bare pipes and the ice laid on that, and when the beer went through these cold pipes, if the beer was warm, the pipes would freeze the beer.

Re-D. Q. 644. And from the end of the coil opposite the faucet the pipe took a straight course down through the bottom and through the floor and into the cellar?

A. Yes, sir.

Re-D. Q. 645. You were asked in reference to the size of the upper ice box and you said two feet square; did you by that mean deep?

A. No, sir. I mean this way and that way.

Re-D. Q. 646. You mean both in length and breadth?

A. Yes, sir.

Re-D. Q. 647. That it was two feet square?

A. Yes, sir.

Re-D. Q. 648. Without reference to height?

A. No, sir; not its height. Its height was about 3 or 3½. I never measured it.

Re-D. Q. 649. You never took the measurements of the upper ice box, did you?

A. No, sir.

Re-D. Q. 650. The lower ice box was composed of an inner and an outer shell packed with sawdust, was it?

A. Yes, sir.

286 Re-D. Q. 651. And about how thick through was the lining?

A. About a foot or 6 or 8 inches. I never measured it.

Re-D. Q. 652. Was both the outside and inside of it wood?

A. Yes, sir.

Re-D. Q. 653. And the sawdust between the two linings?

A. Yes, sir.

Re-D. Q. 654. Packed in?

A. Yes, sir.

Re-D. Q. 655. Under what you have termed the tank in the upper ice box was a closet, was there?

A. Yes, sir.

Re-D. Q. 656. And was there anything kept in that closet?

A. We used to keep two or three of these little seltzer jugs full of cider in there so as to keep them, so we wouldn't kick them around on the floor.

Re-D. Q. 657. And whenever you opened the cupboard to get these jugs could you see the beer-supply pipes where they went through the floor?

A. Yes, sir; four pipes.

Re-D. Q. 658. And were they always bare?

A. Yes, sir; bare and dry.

Re-D. Q. 659. What did you use the old ice box for?

287 A. Used to keep the ham in there and the pop and the cheese and all such stuff for the bar, all the eatables, and sausage.

Re-D. Q. 660. Was it a part of your duties to weekly clean the beer-supply pipes, as you have described in your cross-examination?

A. Yes, sir.

Re-D. Q. 661. And you first forced soda water through them?

A. Used to have a keg or eighth there and fill it with sal soda and water and force it through in the morning the first thing, and Mr. Meinhard would tell us to do that the first thing, before we put the ice in, because when the pipes got hot it would melt the ice, and used to force that through, and took the hose and put it on each end and let cold water go in and fill up the tank with ice, and that would be about nine o'clock, and nobody would come in for beer so early in the morning, and then go down and turn the beer on.

Re-D. Q. 662. When you speak of an eighth you mean a beer keg of an eighth size?

A. Yes, sir; holds four gallons.

Re-D. Q. 663. And would force the soda from the lower ice box into the pipes?

A. Yes, sir; into a water pail, and throw it out.

Re-D. Q. 664. Where would the water pail be that caught the water?

A. At the beer faucets.

Re-D. Q. 665. You would have the beer faucets open, would you?

A. Yes, sir.

Re-D. Q. 666. And force the water through the beer faucets?

288 A. Yes, sir.

Re-D. Q. 667. When you came to rinse the pipes with cold water you forced the water from the top down?

A. I would open the four faucets and put the hose on, one after the other, and let them run for a few minutes, and let it rinse out.

Re-D. Q. 668. Where would you have the water that you used for that purpose? Where did you connect the opposite end of the hose?

A. In the bar-room.

Re-D. Q. 669. In what part of the bar was the water faucet which you used for this purpose?

A. Right next to the beer pump.

Re-D. Q. 670. Right opposite the upper ice box, do you mean?

A. Yes, sir; under the bar.

Re-D. Q. 671. And that was where the pressure pump was kept, under the bar?

A. Yes, sir; right next to it.

Re-D. Q. 672. You first worked for Meinhard for some months off and on before you went there steady, did you?

A. Yes, sir.

Re-D. Q. 673. And you commenced working steady for him about April, 1877?

A. Yes, sir.

Re-D. Q. 674. And how long after that was it that he had this beer drawing and cooling apparatus put in?

A. I think it was put in in April.

289 Re-D. Q. 675. How long a time after you went to work for him steady was it that he put this beer apparatus in?

A. It may be about four weeks.

Re-R. Q. 676. About a month, you think?

A. Yes, sir.

Re-D. Q. 677. This lead pipe which was melted off, for which you were discharged, was it full or empty at the time it was melted?

A. It was empty; if it had been full it would not have burned as quick.

Re-D. Q. 678. Were the other pipes empty or filled?

A. They were filled.

Re-D. Q. 679. And the pipe that was melted was the only empty pipe?

A. Yes, sir; and it burned off quick.

Re-D. Q. 680. When you applied the pressure to the keg of beer to which that pipe that was melted off was attached what happened?

A. The beer flew all over and Mr. Meinhard came down and gave me the rules and regulations and I got my coat and hat and got out.

Re-D. Q. 681. At what place in the pipe did the beer fly all over?

A. Where it was burned.

Re-D. Q. 682. And when you went out of the ice box——

A. Then the beer flew all over.

Re-D. Q. 683. When the beer flew all over you, then what did you do?

290 A. Run back and shut the faucet off.

Re-D. Q. 684. Did that stop the beer?

A. Yes, sir; it couldn't come out of the keg.

Re-D. Q. 685. And it was for that accident that you were discharged, was it?

A. Yes, sir.

Re-D. Q. 686. Then it was after that accident for a period of two or three years that you worked off and on for Mr. Meinhard, as you have stated?

A. I was away for two weeks and Mr. Meinhard sent his children down to have me come up again to help.

Re-D. Q. 687. And after that you were employed off and on as occasion required?

A. Yes, sir.

Re-D. Q. 688. You came up here some two weeks ago to testify, did you?

A. Yes, sir.

Re-D. Q. 689. Why was it that you were not sworn at that time, if you know?

A. Mr. Sullivan didn't show up, I think.

Re-D. Q. 690. And did it not get so late that I told you we would dispense with your examination until the next session?

A. Yes, sir.

Re-D. Q. 691. You say when you went to Mr. Cronise'- office you told him about your being discharged for this accident to the beer-supply pipes?

A. Yes, sir; I told him.

Re-D. Q. 692. And did he incorporate that in the affidavit for you?

291 A. I don't know; I don't remember.

Re-D. Q. 693. You explained the construction and arrangement and operation of Meinhard's apparatus to Mr. Cronise, did you?

A. Yes, sir; I told him the whole thing; how it was.

Re-D. Q. 694. And did he take it down as you gave it to him?

A. Yes, sir.

Re-D. Q. 695. And then did he read it over to you?

A. Yes, sir.

Re-D. Q. 696. And you signed and swore to the statement?

A. Yes, sir.

Re-D. Q. 697. Don't you remember of having seen this model which is marked "Model of Meinhard's Apparatus" one day when you were at Mr. Cronise'- office?

A. Yes, sir; I believe I did.

Re-D. Q. 698. You saw it when you were up there giving an affidavit, didn't you?

A. Yes, sir.

Re-D. Q. 699. Do you remember going to Mr. Cronise'- office a second time and making an affidavit about this model and some other things?

A. Yes, sir.

Re-D. Q. 700. Then you gave two affidavits in Mr. Cronise'- office, did you?

A. Yes, sir.

Re-D. Q. 701. Have you seen either of those affidavits or copies of them or had them read to you since making them?

292 A. No, sir.

Re-D. Q. 702. Will you read the papers which I now hand you and state whether they are not copies of the two affidavits which you gave at Mr. Cronise'- office?

A. Yes, sir; that is right.

Re-D. Q. 703. That is a copy of your first affidavit, is it?

A. Yes, sir.

Re-D. Q. 705. Now, read the paper which I show you and state if that is not a copy of the second affidavit signed by you at Mr. Cronise'- office.

A. Yes, sir.

Recross-examination by Mr. SULLIVAN, counsel for the defendants:

Re-X Q. 705. Is your name George Englert or George J. Englert?

A. George J. Englert.

Re-X Q. 706. You testified on your direct examination that you assisted Mr. Meinhard when he moved from Falls Field to Germania hall?

A. Yes, sir.

Re-X Q. 707. Who else assisted him on that occasion?

A. There was the cartman and all the waiters from the hall and all the boys helped him who were at work for him.

Re-X Q. 708. Please give their names.

A. There was Mr. Schantz, I think, and myself and Mr. Rau, Barth, Gus. Englert, Martin Englert, my brothers; Koehler,
293 Otto Hahn; there was so many I couldn't remember them all. There was all the waiters.

Re-X Q. 709. How many were there helped him altogether?

A. There may have been 15 or 18, and carrying wood and chairs and everything else.

Re-X Q. 710. How long did it take to move?

A. All I done was to help one afternoon to take the bar-room stuff over. We had two of Bartholomay's big, flat wagons.

Re-X Q. 711. Did you see any of the witnesses Stief there?

A. I think Raymond was there.

Re-X Q. 712. How many cartmen did they have?

A. They had cartmen to do the moving for the house, upstairs, and concert, and I forget which, and the beer wagons and pop wagons took all the eatables and chairs and stuff from the hall over.

Re-X Q. 713. Did you see Mr. Albert Stief there on that occasion?

A. Yes, sir.

Re-X Q. 714. And his brother Raymond?

A. Yes, sir.

Re-X Q. 715. You say you saw part of this old apparatus there on that occasion?

A. Yes, sir.

Re-X Q. 716. You say you saw the lead supply pipes?

A. I saw the counter laying over, and I seen this little ice
294 box there pulled off, and I saw the lead pipes pulled off up through and everything smashed up in the cellar and the wine place there, the partition broken out.

Re-X Q. 717. Were the beer-supply pipes fastened to the ice box?

A. No, sir; they were lying on the floor.

Re-X Q. 718. Were they pulled out of the ice box?

A. The tank was on them and laid on the floor—four pipes.

Re-X Q. 719. And they were yet fastened to the ice box, were they?

A. They were fastened to the tank.

Re-X Q. 720. Did they have the rubber hose on?

A. On the end below?

Re-X Q. 721. Yes.

A. I don't remember.

Re-X Q. 722. Did you see any rubber hose there at all on that occasion?

A. No, sir.

Re-X Q. 723. Are you certain?

A. Yes, sir; it must have been cut off below.

Re-X Q. 724. Did you see any part of the lower ice box there?

A. Yes, sir.

Re-X Q. 725. What part of the lower ice box did you see?

A. The whole of it; that staid there.

Re-X Q. 726. You saw it in the cellar?

A. Yes, sir.

295 Re-X Q. 727. And did you take that stuff down to Germania hall?

A. Yes, sir.

Re-X Q. 728. What was done with it down there, if anything?

A. I don't know. I think they put in a new pipe down in Germania hall.

Re-X Q. 729. You don't know what use they made of the old pipes down there, do you?

A. No, sir.

Complainant's counsel offered in evidence the two copies of the last witness' affidavits given in the case of Magin against McKay and against Welker and identified by the witness, and the same are marked Complainant's Exhibit George J. Englert Affidavit- No. 1 and No. 2.

Defendants' counsel objected as incompetent, but not on the ground of their being copies.

GEORGE J. ENGLERT.

Adjourned to December 21st, 10.30 o'clock a. m.

DECEMBER 21ST—10.30 o'clock a. m.

Parties appeared as before.

OTTO SCHANTZ, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

296 A. My name is Otto Schantz; age, 42; residence, 6 Hopeman place, Rochester, N. Y.; occupation, porter at Wile, Brickner & Wile clothing store.

Q. 2. Do you know John Meinhard, of this city, who formerly was one of the proprietors of Falls Field?

A. Yes, sir.

Q. 3. Were you ever employed by Mr. Meinhard as regular bartender?

A. Yes, sir.

Q. 4. In what part of his establishment did you tend bar?

A. I tended bar in the saloon facing on North St. Paul street.

Q. 5. Were you his regular bartender in his saloon proper?

A. Yes, sir.

Q. 6. When were you employed by Meinhard as his regular saloon barkeeper and for how long a period were you so employed by him?

A. I was engaged as regular bartender by John Meinhard from the fall of 1879 to the spring of 1881—about a year and a half.

Q. 7. During that year and a half were you constantly employed as Meinhard's regular saloon bartender?

A. Yes, sir.

Q. 8. And as such bartender did you have entire charge of his bar and saloon?

A. Yes, sir.

297 Q. 9. When you took charge of Meinhard's saloon bar in the fall of 1879 had he a beer drawing and cooling apparatus?

A. Yes, sir.

Q. 10. Was that beer drawing and cooling apparatus in use when you took it in the fall of 1879?

A. Yes, sir.

Q. 11. State whether or not you continued to use that beer drawing and cooling apparatus all the time you remained there and up to the spring of 1881.

A. Yes, sir; it was used during the time I worked there.

Q. 12. Describe Meinhard's beer drawing and cooling apparatus.

A. He had a small upper ice box behind the bar and three faucets attached to it—three or four faucets—and each faucet connected with a coil, and from the coil the pipes run through the floor and slanted off towards the wine cellar and entered through the wine cellar and to the lower ice box below.

Q. 13. You say there were three or four beer-supply pipes; of what material were these pipes?

A. Lead pipes.

Q. 14. Where was the beer kept?

A. The beer was kept in the lower ice box.

Q. 15. How were these lead beer-supply pipes connected to the faucets in the beer kegs?

A. Those lead pipes were connected to the beer faucets with rubber hose, coupling at one end and fastened to the lead pipes with copper wire.

298 Q. 16. Was there a rubber pipe on the end of each beer-supply pipe?

A. There was a rubber pipe on the end of each beer-supply pipe.

Q. 17. How was the rubber pipe secured to the end of the beer-supply pipe?

A. To the beer-supply pipe it was fastened with copper wire.

Q. 18. Slipped over the end and secured to the copper wire?

A. Yes, sir.

Q. 19. And how was the opposite end of the rubber connecting pipes secured to the beer faucets?

A. By a coupling.

Q. 20. You say that there was a coil connected to each faucet in the upper ice box?

A. Yes, sir.

Q. 21. In what part of the upper ice box were these coils located?

A. Right in the upper part of the upper ice box.

Q. 22. How high from the floor was the bottom of the upper ice box—that is, the box that held the ice?

A. About a foot and a half to two feet.

Q. 23. On what did these coils rest that were in the upper ice box?

A. They laid at the bottom of the upper ice box.

Q. 24. They laid on the bottom of the upper ice box, did they?

299 A. Yes, sir.

Q. 25. And what did you put in the upper ice box?

A. Generally put ice there on top of the coils to keep them cool.

Q. 26. During the year and a half that you were bartender who attended to putting the ice in the upper ice box?

A. I did generally.

Q. 27. How often would you put ice in this upper ice box?

A. According to the weather; sometimes two and sometimes three times, more or less.

Q. 28. Sometimes two and three times a day, or more or less, according to the weather?

A. Yes, sir.

Q. 29. What became of the water resulting from the melting of the ice in this upper ice box?

A. I always had to dip it out.

Q. 30. Was there any other way of getting the ice water out of this upper ice box?

A. No, sir.

Q. 31. Was there any drip pipe or other arrangement by which the water could run off of itself?

A. No, sir.

Q. 32. Was it a part of your daily duties to dip the water out of this upper ice box?

A. Yes, sir.

Q. 33. Did you do that when you first took charge of the saloon bar?

300 A. As soon as we used ice there I had to dip the water out.

Q. 34. And did you continue dipping the water out as occasion required during all the time you tended bar there?

A. Yes, sir.

Q. 35. Were there any tin or drip pipes of any kind in the bottom of the upper ice box?

A. No, sir.

Q. 36. Was the bottom of this upper ice box water-tight?

A. Yes, sir.

Q. 37. In what part of the bar was the upper ice box located?

A. It was near the west end of the bar-room.

Q. 38. Behind the bar?

A. Yes, sir; behind the bar.

Q. 39. Did you use this beer-drawing apparatus for drawing the beer that was served in the saloon proper?

A. Yes, sir.

Q. 40. Was there any arrangement by which the water that accumulated in the upper ice box could be drawn off in any way?

A. No, sir.

Q. 41. The only way was to dip it out?

A. Yes, sir.

Q. 42. Did you tend saloon and use this beer-drawing apparatus on Sundays?

A. During the forenoon when we had the saloon open and part of the afternoon.

301 Q. 43. What was the rule about keeping the saloon open on Sundays?

A. Generally kept the saloon open up to about seven o'clock in the evening and then we opened the concert hall.

Q. 44. Then, after the concert was over in the evening, what did you do?

A. Sometimes we opened the saloon up once more, according to the customers.

Q. 45. And was all the beer that you served in the saloon on Sundays drawn from this beer-drawing apparatus?

A. Yes, sir.

Q. 46. Did the beer-supply pipes in passing through the saloon floor go through one hole or separate holes?

A. Went through one hole.

Q. 47. And, as I understand you, the beer-supply pipes came directly down from the upper ice box through the floor into the cellar?

A. Yes, sir.

Q. 48. And then slanted off through a corner of the wine cellar and into a hole in the side of the ice box?

A. Yes, sir.

Q. 49. As the beer-supply pipes came down into the cellar and slanted off into the wine cellar could they or not be plainly seen?

A. Yes, sir.

Q. 50. And could they also be seen in the wine cellar?

A. Yes, sir.

302 Q. 51. At what point did the beer-supply pipes enter the lower ice box?

A. They entered on the east side, near the northwest corner.

Q. 52. About how far on the east side from the north corner?

—. About a foot or a foot and a half.

Q. 53. Did the beer-supply pipes enter the lower ice box through separate holes or one hole?

A. One hole.

Q. 54. How far into the lower ice box did the beer-supply pipes extend?

A. About a foot and a half or two feet; it might be more or less.

Q. 55. And then over the end of these beer-supply pipes was fastened the rubber connection that went to the beer faucets?

A. Yes, sir.

Q. 56. Where was the ice placed in the lower ice box?

A. There was shelving in the lower ice box where the ice was kept on.

Q. 57. On how many sides?

A. On three sides.

Q. 58. Which sides were they?

A. The east, south, and west.

Q. 59. And it was at the east side that the beer-supply pipes entered, was it not?

A. Yes, sir.

Q. 60. Did they enter above or below the shelving provided for the ice?

303 A. They entered above.

Q. 61. Did the beer-supply pipes extend out over the shelving for the ice?

A. About five or six inches.

Q. 62. In what part of the ice box did you keep the kegs that were on tap?

A. On the east side.

Q. 63. Underneath the ice shelf?

A. Underneath the ice shelf.

Q. 64. Was there any covering of any kind around the beer-supply pipes from the upper to the lower ice box?

A. No, sir.

Q. 65. Were the beer-supply pipes during the eighteen months that you were barkeeper for Meinhard always bare?

A. Always bare.

Q. 66. As you saw the beer-supply pipes coming through the floor and branching off into the wine cellar were they covered or bare?

A. They were bare.

Q. 67. And were they also bare in the wine cellar?

A. Yes, sir.

Q. 68. Had there been any covering of any kind surrounding the beer-supply pipes from the upper to the lower ice box would you have seen it?

A. Sure.

Q. 69. And you would certainly have known of it, would you?

A. Certainly.

304 Q. 70. During the eighteen months that you were barkeeper who tapped the beer in the cellar and made the connection to the beer-supply pipes?

A. I did.

Q. 71. Was that also a part of your daily duties?

A. Yes, sir.

Q. 72. And how often on the average would it be necessary for you to go into the lower ice box?

A. According to the business; sometimes two and sometimes three, more or less.

Q. 73. Was there any water or air passage from the upper to the lower ice box?

A. No, sir.

Q. 74. Was there any passage or connection whatsoever between the upper and the lower ice box?

A. There was no connection only through the beer-supply pipes.

Q. 75. The beer-supply pipes were the only things?

A. Yes, sir; the only connection with the upper bar-room.

Q. 76. Was there any rubber hose or pipe surrounding the beer-supply pipes from the upper to the lower ice box?

A. No, sir.

Q. 77. What was done with the water from the melting of the ice in the lower ice box?

A. It run off into a sewer.

Q. 78. Did it drip from the shelves onto the floor and then directly into the sewer?

305 A. Yes, sir.

Q. 79. Where was the sewer into which the drippings went?

A. On the east side, under the rack where the beer lay.

Q. 80. Were the kegs on tap supported on a rack?

A. Those kegs that were tapped were laying on a rack; yes, sir.

Q. 81. In what direction did the rack run?

A. The rack run from the south to the north.

Q. 82. And how did the beer kegs lay on this rack?

A. From east to west.

Q. 83. Did they keep the wine cellar locked?

A. Yes, sir.

Q. 84. Where was the key kept?

A. Upstairs in the bar-room.

Q. 85. Had you access to the wine cellar?

A. Yes, sir.

Q. 86. Did you have occasion to go in there from time to time?

A. Yes, sir.

Q. 87. And — such occasions when you went into the wine cellar would you see the beer-supply pipes?

A. Yes, sir.

Q. 88. Was there any dripping or running of water from the upper ice box into the lower ice box?

A. No, sir.

306 Q. 89. Was there a gas jet in the cellar?

A. Yes, sir.

Q. 90. Where was that gas jet located?

A. On the outside of the wine cellar.

Q. 91. On the east or west side of the door of the wine cellar?

A. On the west side of the wine-cellar door.

Q. 92. Was this gas jet usually kept dimly lighted?

A. Kept always a little bit of a light there?

Q. 93. And what would you do when you went into the cellar?

A. We generally turned the gas up if we had anything to do in the outer part of the cellar.

Q. 94. Would you have a candle or any light to go into the lower ice box?

A. I always had to use a candle to go into the lower ice box.

Q. 95. And where was the candle usually kept?

A. Generally kept that candle on a stairway leading down from the bar-room above.

Q. 96. When the gas light was turned up in the cellar could you plainly see these beer-supply pipes as they came through the floor and went into the wine cellar?

A. Yes, sir.

Q. 97. And upon all such occasions when you have seen the beer-supply pipes running from the upper to the lower ice box were they always bare?

A. Always bare.

307 Q. 98. No covering of any kind upon or around them?

A. No, sir.

Q. 99. Examine the model which I now show you, marked "Complainant's Exhibit Model of Meinhard's Apparatus," and state whether or not that is a substantially correct representation of the construction and arrangement of Meinhard's beer cooling and drawing apparatus that was in use from the fall of 1879 to the spring of 1881, when you was his regular saloon bartender.

A. Yes, sir; that is a correct model.

Q. 100. Does this brass bracket here between the door of the wine cellar and the lower ice box locate correctly the position of the gas jet in the cellar?

A. Yes, sir.

Q. 101. Examine the model which I now show you, marked "Defendants' Exhibit Meinhard Apparatus Model," and state whether there was any rubber hose around the beer-supply pipes such as shown in this model.

A. No, sir.

Q. 102. Never any such arrangement?

A. No, sir.

Q. 103. During the time you tended bar for Meinhard?

A. No, sir; never.

Q. 104. Did the beer-supply pipes ever go into the front of the ice box, as shown in this model?

A. No, sir; they went in on the east side, near the northeast corner.

308 Cross-examination by Mr. SULLIVAN, counsel for defendants:

X Q. 105. Before you commenced working for Mr. Meinhard what were you engaged in doing?

A. I was tending bar for Martin Reed, on Mill street.

X Q. 106. How long did you tend bar for Martin Reed?

A. I worked all during that summer there in 1879.

X Q. 107. And before that what were you doing?

A. Before that I worked on Front street.

X Q. 108. For whom?

A. For Andy Schauers.

X Q. 109. How long did you work for him?

A. I worked there during the winter season; he had a comique and I was tending bar there nights.

X Q. 110. He kept a theatre comique in connection with his saloon, did he?

A. Yes, sir.

X Q. 112. And for how long did he continue that business?

A. During the winter season.

X Q. 113. And before that what were you engaged in doing?

A. Before that I was off and on helping out, tending bar wherever I had a chance to earn a little something.

309 X Q. 114. For how many different persons, before you commenced working in this theatre comique, had you worked for in tending bar?

A. My first place as bartender was at the corner of Allen and State streets, Caspar Spahr.

X Q. 115. How long did you work for him?

A. I worked for him about two years.

X Q. 116. How old were you at that time?

A. I was at that time about 34 or 35 or 36. I don't know exactly.

X Q. 117. And before you commenced working for Caspar Spahr where were you?

A. I was in the West.

X Q. 118. What part of the West?

A. California.

X Q. 119. What were you doing in California?

A. I was tending bar in a hotel.

X Q. 120. For whom?

A. For Charlie Grainer.

X Q. 121. How long did you remain in California?

A. About three years.

X Q. 122. Did you work for Charlie Grainer all the time you were in California?

A. No, sir.

X Q. 123. Who else did you work for while there?

A. I worked there with my relations on a farm before I came to San Francisco.

X Q. 124. How long did you work on the farm?

310 A. About a year and a half.

X Q. 125. And while in San Francisco did you work all the time for Mr. Grainer?

A. I worked for Mr. Grainer about a year.

X Q. 126. And who else did you work for?

A. The rest of the time I had nothing to do.

X Q. 127. Then for about six months of the time while in San Francisco you were out of employment?

A. Yes, sir.

X Q. 128. What was your relative's name with whom you lived while in California?

A. One was Fred. Gerkhardt.

X Q. 129. Who else?

A. I don't know whether his name is John or not, and Getzelman. I don't know his first name any more.

X Q. 130. Were they farmers?

A. One was a hotel-keeper and one was a carpenter.

X Q. 131. Neither of them was a farmer?

A. The carpenter had part of a farm.

X Q. 132. It was on his farm that you worked?

A. Yes, sir.

X Q. 133. Did Mr. Grainer carry on any other kind of business than that of a hotel-keeper?

A. No, sir; all he had was a hotel and a bar-room.

X Q. 134. And after leaving San Francisco where did you go to?

A. I came to Rochester.

311 X Q. 135. And have you been in Rochester ever since?

A. Yes, sir.

X Q. 136. Did you commence working for Mr. Caspar Spahr on your return to Rochester?

A. Not right away.

X Q. 137. How long were you idle before working for him?

A. I believe it was in the fall of that same year that I arrived here that I found employment with Caspar Spahr.

X Q. 138. What year did you return from San Francisco?

A. 1872.

X Q. 139. In the spring or fall of 1872?

A. In April, 1872.

X Q. 140. And you commenced working for Mr. Spahr when?

A. It might have been the fall of the same year. I don't remember exactly.

X Q. 141. And how long did you work for Mr. Spahr?

A. About a year and a half or two years.

X Q. 142. And who did you work for after that?

A. After that I worked for Martin Reed.

X Q. 143. How long did you work for him?

A. I worked for him off and on.

X Q. 144. For how long?

A. I don't know exactly how long I worked for him; sometimes a year and sometimes less.

312 X Q. 145. And who next did you work for?

A. Andy Schauers, on Front street.

X Q. 146. How long did you work for him?

A. I worked for him during the winter season that he kept the theater comique.

X Q. 147. What kind of shows were held in this place?

A. Variety show.

X Q. 148. They were a cheap class of shows, were they not?

A. That is all right; a variety show.

X Q. 149. Were they not a cheap class of variety shows?

A. I never knew what they charged for an entrance fee. All I had to do was tending bar, and I had nothing to do with the rest of the business there.

X Q. 150. Don't you know how much they charged for an admission fee there?

A. No, sir.

X Q. 151. Did you never go into the show?

A. I had the show right before me, tending bar?

X Q. 152. It was held in the bar, was it?

A. Yes, sir; the bar was over the front part of the stage.

X Q. 153. And for how long did they continue that show?

A. All I worked there was during the winter season.

X Q. 154. And it continued that winter, did it?

313 A. Yes, sir.

X Q. 155. What was the reason for the show being discontinued?

A. Generally went to traveling in the spring of the year.

X Q. 156. Who was manager of the show?

A. Andy Schauers.

X Q. 157. The same who kept the saloon?

A. Yes, sir.

X Q. 158. Did the police authorities interfere here with the shows?

The complainant's counsel objected as irrelevant and immaterial.

A. Not that I know of.

X Q. 159. Don't you know that the police authorities went down there and told him he must give up keeping that kind of shows?

Same objection.

A. I don't remember.

X Q. 160. There were some complaints made by the neighbors about it, were they not?

Same objection.

A. I can't remember.

X Q. 161. Did he close the saloon at the same time he discontinued the show business?

A. Yes, sir.

X Q. 162. Don't you know that there was a complaint made to the police by different parties in consequence of boys and girls visiting this variety theatre?

Same objection.

314 A. I don't remember whether there was any complaint made while I was there.

X Q. 163. You know it was a resort for young boys and girls, do you not?

Same objection.

A. There was no girls allowed whatever.

X Q. 164. Young boys allowed to go in there?

Same objection.

A. I never seen a boy in there. I have seen young men in there and married men.

X Q. 165. Did you see young men 14 or 15 years old there?

A. I couldn't say how old they were.

X Q. 166. Were the actors men and women or boys and girls?

A. They were married men and wives.

X Q. 167. How many women were there?

A. According to the troop that gave the show.

X Q. 168. How many as a general thing?

A. Sometimes there might be four and sometimes there might be only five altogether.

X Q. 169. And you think they were all married women?

A. I always thought they were married; I never asked them.

X Q. 170. Don't you know the price of admission to this place was ten cents?

A. No, sir.

X Q. 171. And 25 cents?

315 A. No, sir; I couldn't say. I hadn't nothing to do with this kind of business.

X Q. 172. Who attended to that part of the business?

A. There was another man who attended to that.

X Q. 173. Who was he?

A. I don't know his name.

X Q. 174. After you quit working for this gentleman who kept a variety show on Front street where did you go to?

A. I went back to Martin Reed's again.

X Q. 175. How long did you work for him?

A. I worked for him during that summer of 1879 until in the fall of 1879, when I started in with Meinhard.

X Q. 176. Is Front street in this city a street chiefly occupied by saloons and second-hand clothing stores?

Complainant's counsel objected as irrelevant and immaterial.

A. I guess it is.

X Q. 177. It is not considered a very high-toned street, is it?

A. I don't know.

X Q. 178 After you quit working for Mr. Reed the second time where did you go to?

A. I went to work for John Meinhard.

X Q. 179. And that was in 1879?

A. That was in 1879?

X Q. 180. Who was his bartender at that time?

316 A. I don't remember that he had any bartender at that time. There was one fellow before me and his name was Felix Guenther.

X Q. 181. How long had he worked for Mr. Meinhard?

A. He worked for him several years.

X Q. 182. Did you know Mr. Guenther while he worked for Mr. Meinhard?

A. Yes, sir.

X Q. 183. Were you in the habit of visiting Mr. Meinhard's saloon during that time?

A. I used to help there on Sundays, waiting in the concert hall.

X Q. 184. While Mr. Guenther was the bartender?

A. Yes, sir; while he was the regular bartender.

X Q. 185. How long did you work for Meinhard in the concert hall before you went into the saloon?

A. I don't know exactly; it might have been a year and it might have been more or less that I worked there on Sundays.

X Q. 186. That is, you worked as waiter in the concert hall for a

year or two on Sundays before you commenced working for him in the saloon?

A. Yes, sir.

X Q. 187. What year was it that you commenced working for him as waiter in the concert hall?

A. It might have been in the spring of 1878 and it might have been before that. I don't exactly remember.

317 X Q. 188. How many men did Mr. Meinhard employ in his concert hall while you worked there?

A. That was according to the crowd that gathered; sometimes six and sometimes more.

X Q. 189. Did he have as many as 20 sometimes?

A. That was according to the business. If it was of use to him he would engage as many as could work.

X Q. 190. Did you ever see 20 at work there on Sundays?

A. I don't remember.

X Q. 190. Did you ever see 30 work there on Sundays?

A. No, sir.

X Q. 192. On the occasion of a picnic or party would there be as many as 20 or 30 young men working there?

A. I don't remember as he ever had as many as that.

X Q. 193. How many is the most that you ever saw work there at one time?

A. I don't know; about 15 or 18 or 20 was the most that I can ever recollect.

X Q. 194. Before you went to California where did you live?

A. Down East, in Utica.

X Q. 195. What were you doing in Utica?

A. I was working at the carpenter business.

X Q. 196. For whom?

A. A man by the name of John Lienhardt.

318 X Q. 197. Whereabouts in Utica did he live?

A. He used to live off Chenango avenue. I have forgotten the name of the street.

X Q. 198. And how long did you work for him?

A. I worked for him during my apprenticeship.

X Q. 199. How long was that?

A. About two years.

X Q. 200. Who worked with you?

A. There was two or three more fellows that worked there as regular carpenter.

X Q. 201. What were their names?

A. One name was Feifer and the other man's name was Dancer, and the other one I don't remember.

X Q. 202. Before you commenced working at the carpenter business what were you engaged in doing?

A. I was working for—I don't know the man's name any more—I was working with the masons.

X Q. 203. What doing?

A. Carrying hod.

X Q. 204. In Utica?

A. Yes, sir.
X Q. 205. What was the mason's name?
A. That is what I can't remember.
X Q. 206. How long did you work for him?
A. I worked for him about a year.
X Q. 207. Before that what were you doing?
319 A. I was working on the New York Central.
X Q. 208. What were you doing on the Central?
A. As trackman.
X Q. 209. At Utica?
A. Yes, sir.
X Q. 210. How long were you in that business?
A. I don't know. It might have been half a year or three-quarters of a year.
X Q. 211. Were you born in Utica?
A. No, sir.
X Q. 212. Where were you born?
A. In Germany.
X Q. 213. When did you come to this country?
A. 22 years ago this month.
X Q. 214. Did you land in New York?
A. Yes, sir.
X Q. 215. And from there where did you go to?
A. From there I went to Rome.
X Q. 216. How long did you remain in Rome?
A. I staid about a year and a half to two years in Rome.
X Q. 217. And from there did you go to Utica?
A. From there I went to Utica.
X Q. 218. What were you engaged in doing while in Rome?
A. I was learning tanning leather.
320 X Q. 219. How long did you work at that business?
A. About a year and a half to two years.
X Q. 220. Who did you work for while in Rome?
A. I worked in Rome. I was in partnership, and one partner was Cony Schaller and the other partner's name was Martin—I had the name just now.
X Q. 221. You have forgotten the last name, have you?
A. Yes, sir; I have.
X Q. 222. How long did you work for them?
A. About a year and a half or two years.
X Q. 223. Did you learn the tanning trade during that time?
A. Yes, sir.
X Q. 224. And you quit that business and went into the railroading business?
A. I quit that business, and from there I went to Utica.
X Q. 225. And commenced working on the railroad?
A. Yes, sir; commenced working on the railroad.
X Q. 226. What doing on the railroad?
A. As trackman.
X Q. 227. And did you go to California from Utica?
A. Yes, sir.

X Q. 228. Who went with you to California?

321 A. My brother started at the same time, but a different route. I went by water and he went by rail.

X Q. 229. Any one else go?

A. No, sir.

X Q. 230. What was your reason for going that way?

A. I wanted to see the world.

X Q. 231. And did you go by rail in order to do that?

A. I went by water.

X Q. 232. And he went by rail?

A. Yes, sir.

X Q. 233. Both started from Utica?

A. Yes, sir.

X Q. 234. At the same time?

A. Yes, sir; at the same time; we started from Utica to New York.

X Q. 235. You took the boat at New York and he took rail there, did he?

A. Yes, sir.

X Q. 236. And where did you meet?

A. We met at the place of destination.

X Q. 237. Where was that?

A. In Cloverdales, Sonoma county, California.

X Q. 238. What did it cost you to go by boat?

Objected to as irrelevant and immaterial.

A. It cost me $75.

X Q. 239. Do you know how much it cost your brother to go by rail?

322 A. I don't know; I never asked him.

X Q. 240. He never told you, did he?

A. No, sir.

X Q. 241. Where is your brother now?

A. He is dead and buried.

X Q. 242. Where did he die?

A. At the Bath Soldiers' home.

X Q. 243. Where did he enlist?

A. He enlisted in New York—the First New York mounted rifles.

X Q. 244. He returned, then, from California?

A. Yes, sir; he returned the same time I did.

X Q. 245. Did you come back together?

A. Yes, sir.

X Q. 246. And was it after his return from California that he enlisted?

A. No, sir; he was during the war.

X Q. 247. Then he had enlisted before going to California?

A. Certainly.

X Q. 248. Had you also enlisted?

A. No, sir.

X Q. 249. How long was he in the army?

A. He was in the army pretty near all during the rebellion.

X Q. 250. You didn't take part in the rebellion?

A. No, sir; I was too late.

323 X Q. 251. How long did you remain in California?

A. About three years.

X Q. 252. Did your brother remain there about the same length of time?

A. Yes, sir.

X Q. 253. What was his business?

A. His profession was gard-ner or florist.

X Q. 254. After you stopped working at Meinhard's what did you do?

A. After I quitted Mr. Meinhard's, a couple of months after, I found employment where I am now, at Wile, Brickner & Wile's—no; after I quit at Meinhard's I found employment down at the lake.

X Q. 255. What doing?

A. Tending bar.

X Q. 256. How old were you at that time?

A. At that time I was about 36 or 37.

X Q. 257. Are you a married man?

A. Yes, sir.

X Q. 258. When did you marry?

A. About twelve years ago.

X Q. 259. Did you marry in Rochester?

A. Yes, sir.

X Q. 260. Did you marry before you went to California or on your return?

A. After I came from California.

X Q. 261. Where do you live now?

A. I live here in Rochester.

324 X Q. 262. Whereabouts in Rochester.

A. 6 Hopeman place.

X Q. 263. Your family living with you?

A. Yes, sir.

X Q. 265. Was Mr. Gilbert in partnership with Mr. Meinhard while you worked for him?

A. Not that I know of.

X Q. 265. You didn't know Mr. Gilbert in the business?

A. I didn't know he had any partner in the business while I worked for Meinhard. All I had to look for was Meinhard.

X Q. 266. Mr. Meinhard had charge of the business, did he?

A. Yes, sir.

X Q. 267. He looked after the saloon and after the concert hall and the business carried on there, did he?

A. Yes, sir.

X Q. 268. Did you see Mr. Gilbert about there much?

A. He boarded with Mr. Meinhard.

X Q. 269. What was Gilbert's business?

A. He was a cutter in a clothing-house; he is a clothing cutter.

X Q. 279. Did any one else work in the saloon bar while you worked there?

A. No, sir.

X Q. 271. You tended bar alone, did you?

A. Yes, sir.

X Q. 272. Do you know Mr. Albert Stief?

325 A. Yes, sir.

X Q. 273. Do you recollect seeing him work about there?

A. He worked there with Felix Guenther.

X Q. 274. He worked there, then, before you commenced working there?

A. Yes, sir.

X Q. 275. Did he also work there after you commenced working there?

A. He might be employed Sundays for waiting out in the hall, but I ain't sure, though.

X Q. 276. Didn't you have any assistant at all while you were tending bar for Mr. Meinhard?

A. If we had a picnic or anything like that there was always a man the next day to help clean out the concert hall and so on.

X Q. 277. Who was that?

A. That was different parties.

X Q. 278. Can you give their names?

A. No, sir; I couldn't; never asked them.

X Q. 279. Did Otto Hahn help you?

A. Otto Hahn was there as a waiter.

X Q. 280. He didn't assist you in the bar, then?

A. He assisted me once in awhile, when I was very busy, behind the bar.

X Q. 281. What did he do about the bar?

A. He had to help around the bar-room and about and down the cellar.

X Q. 282. Did he wait on the bar?

326 A. Yes, sir; off and on.

X Q. 283. That is, when you were not present?

A. Yes, sir; when I wasn't present.

X Q. 284. You didn't have a regular assistant, then?

A. I hadn't a regular assistant; no, sir.

X Q. 285. And the only assistance that you received was after having a concert or picnic there; one of the waiter boys would come in and help you clean up?

A. Yes, sir.

X Q. 286. Do you know who put this apparatus in for Mr. Meinhard?

A. No, sir.

X Q. 287. It was in his saloon when you commenced working for him?

A. Yes, sir.

X Q. 288. While you worked as waiter in the hall for Mr. Meinhard who was his bartender?

A. Feliz Guenther.

X Q. 289. Any one else?

A. Felix Guenther had assistance, this Albert Stief.

X Q. 290. Do you know Fred. Gutacher?

A. I know him; yes, sir.

X Q. 291. Was he also bartender?

A. I don't know whether he was employed as a regular bartender or not.

X Q. 292. Did you ever see him work behind a bar?

327 A. I don't recollect of seeing him.

X Q. 293. Did you see Mr. Meinhard wait on the bar occasionally?

A. Yes, sir.

X Q. 294. Quite often?

A. As often as business called on him; that I was, maybe, employed down the cellar or outside that he had to take my place.

X Q. 295. Do you know Mr. Cassebeer, a plumber of this city?

A. I know him by name.

X Q. 296. Did you see him do any work about Mr. Meinhard's place of business while you worked there?

A. No, sir.

X Q. 297. Do you know Mr. Barr or Mr. Schaub?

A. No, sir.

X Q. 298. Have you ever heard of them?

A. I know of one fellow named Schaub; he is a tinsmith.

X Q. 299. Who spoke to you about him?

A. Nobody.

X Q. 300. Did you know Mr. Schaub, who has testified in this case?

A. I don't know anything about it.

X Q. 301. Don't you know Mr. Schaub is a plumber as well as tinsmith?

A. All I know of him is he is a tinsmith and used to have a shop on West avenue.

X Q. 302. Have you been in his place of business?

328 A. Yes, sir.

X Q. 303. When?

A. Several years ago, when I was a collector for a newspaper.

X Q. 304. What newspaper did you collect for?

A. A German paper.

X Q. 305. Did you ever see Mr. Schaub or Mr. Barr do any work about Mr. Meinhard's place?

A. No, sir.

X Q. 306. Have you ever spoken to Mr. Schaub?

A. No, sir.

X Q. 307. Have you spoken to Mr. Barr or Mr. Cassebeer about this case?

A. No, sir.

X Q. 308. You have taken considerable interest in this case, haven't you?

A. I don't take no interest whatever.

X Q. 309. Not interested in it one way or the other?

A. No, sir.

X Q. 310. Hasn't Mr. Magin here hired you to go around and look up witnesses?

A. Mr. Magin asked me whether I know of any witnesses and I told him yes.

X Q. 311. Hasn't he hired you to go around and look up witnesses?

A. No, sir.

X Q. 312. Has he paid your expenses?

A. He paid expenses; what I lost during my time of labor; what I lost in employment.

329 X Q. 313. Didn't you go to Chicago at Magin's request?

A. Yes, sir.

X Q. 314. Did he pay your expenses?

A. Yes, sir.

X Q. 315. You went out there and talked with Mr. Hahn, didn't you?

A. I asked Mr. Hahn——

X Q. 316. I asked you if you went there to see Mr. Hahn?

Complainant's counsel states that the witness started as he asked the stenographer to note of record, whereupon he was interrupted, and counsel now insists upon the witness proceeding with the answer.

Defendants' counsel requests the witness to answer the questions asked, and requests complainant's counsel to allow the witness to answer the questions without interruption.

Complainant's counsel is endeavoring to have the witness' answers continued without interruption, and not to be interrupted in the silly way in which he has repeatedly been interrupted by defendants' counsel; that already complainant's counsel has sat by and permitted the matter to such an extent that he does not propose to permit it any further.

Defendants' counsel states that he has observed during the progress of this trial what he has never witnessed before in the trial of a cause, that while a witness is being examined by opposing

330 counsel complainant's counsel conducts himself properly during such examinations until such time as the examination enters into material matter, and at once complainant's counsel raises interruptions and engages in conversation with his associate counsel and with his clients in the case, talking aloud and laughing and doing everything possible to interfere with the proper conduct of the cross-examination of his witnesses, and the court will readily understand the motive of complainant's counsel in such improper conduct, and he requests that for the future counsel will endeavor to avoid interrupting the regular and proper cross-examination of his witnesses.

Complainant's counsel says that the probabilities are, from the manner in which defendants' counsel has conducted his cross-examinations, that it is the first trial of a cause he has ever engaged in; furthermore, that defendants' counsel clearly lacks one very essential element in his composition, to wit, the possibility of being

able to tell the truth, for the statement which he has spread of record is a tissue of falsehood from beginning to end, and, as stated at the outstart, he deliberately and willfully interrupted the witness in the midst of an important answer, which apparently, at least, it is fair to assume so far from his conduct, did not suit him.

Defendants' counsel states that he has no desire and does
331 not intend to follow the example of complainant's counsel by calling improper names and using language unprofessional and such as he has never before heard during the progress of a trial or on any other occasion, and no gentlemen should be guilty of such improper and unprofessional conduct, particularly a person who is an attorney of this court.

Complainant's counsel replies that the language used was justified by the facts, and he is not in the habit of galvanizing the facts by the use of delicate language, but characterizes them as they deserve, and that unfortunately he found it impossible to employ any other language that would properly suit the facts.

X Q. 317. I asked if you went there to see Mr. Hahn.

A. I went there to see Mr. Hahn and I asked him whether he could remember anything about Falls Field, and he said he could, and I asked him whether he could give an affidavit to what he knows, and he says he could and he would, and I took him up to a notary public, where he gave his affidavit.

X Q. 318. Who was the notary public?

A. I forget his name.

X Q. 319. Who told you to go there?

A. I had his name given to me. I forget what name was.

X Q. 320. By whom?

A. By Mr. Cronise.

X Q. 321. Mr. Cronise of this city?

332 A. Yes, sir.

X Q. 322. Mr. Magin's attorney?

A. Yes, sir.

X Q. 323. Did he also give you a letter to this gentleman?

A. I hadn't no letter to any gentleman there.

X Q. 324. Did he give you a letter introducing you to this notary public in Chicago?

A. No, sir.

X Q. 325. What did he give?

A. All I had was his name on a piece of paper, and that was all.

X Q. 326. And when you called at his office was he in?

A. He happened to be there; yes, sir.

X Q. 327. Did you see him before you saw Mr. Hahn?

A. No, sir.

X Q. 328. Did Mr. Cronise tell you that he had made arrangements for him to draw the affidavit for you?

A. No, sir.

X Q. 329. Did Mr. Hahn go with you to this notary public?

A. Yes, sir.

X Q. 330. Before going to the notary public had you and Mr. Hahn talked about the Meinhard apparatus?

A. No, sir; I only asked him what he knows.

X Q. 331. Stop right there and answer my question.

333 Defendants' counsel requests the witness to answer the questions only and volunteer nothing.

X Q. 332. Who was present when you had this talk with Mr. Hahn in Chicago?

A. I talked with him all alone.

X Q. 333. Did you describe this apparatus to him?

A. No, sir.

X Q. 334. Didn't you ask him if this apparatus had a rubber hose over the beer-supply pipes?

A. No, sir.

X Q. 335. Didn't you tell him this apparatus didn't have a rubber hose over the supply pipes?

A. No, sir.

X Q. 336. Didn't say anything about the rubber hose?

A. No, sir.

X Q. 337. Did you say anything about the coolers?

A. I asked him what he knowed about Falls Field, and he said he remembered it.

X Q. 338. Did you ask him if he knew about the coolers being in this apparatus?

A. He remembered the cooler very well.

X Q. 339. Did you ask him if there were coolers in this apparatus?

A. I asked him whether he knowed that cooling apparatus, and he said "yes."

X Q. 340. Did you ask him how many coolers there were in the upper ice box?

334 A. He said he could describe that cooler very well without me telling him anything.

X Q. 341. Mr. Schantz, will you answer my questions, please—if you asked Mr. Hahn how many coolers there were in this upper ice box?

A. I never asked him anything.

X Q. 342. Did you tell him how many coolers there were in the upper ice box?

A. No, sir.

X Q. 343. Did he tell you how many coolers there were in the upper ice box?

A. No, sir.

X Q. 344. Did he tell you how many faucets there were in the upper ice box?

A. No, sir.

X Q. 345. Did he tell you how many beer-supply pipes there were in the apparatus?

A. No, sir.

X Q. 346. Did he tell you how the lower ice box was made?

A. No, sir.

X Q. 347. Did he tell you how the upper ice box was made?

A. No, sir.

X Q. 348. Did he tell you who made this apparatus?

A. No, sir.

X Q. 349. Did he tell you when he saw this apparatus?

A. No.

335 X Q. 350. Did he tell you when he worked for Mr. Meinhard?

A. Not that I know of.

X Q. 351. Did he tell you he had a letter from Mr. Magin about this apparatus?

A. No, sir.

X Q. 352. Did he tell you anything about this gas jet?

A. No, sir.

X Q. 353. Did he tell you anything about dipping water out of the upper ice box?

A. No, sir.

X Q. 354. Did he tell you anything about putting ice in the upper ice box?

A. No, sir.

X Q. 355. Did he tell you anything about working for Mr. Meinhard?

A. No.

X Q. 356. How long did you remain in Chicago upon that occasion?

A. I arrived there at 10 o'clock in the morning, and I left the same evening.

X Q. 357. Did you have any other business in Chicago than to see Mr. Hahn?

A. No, sir.

X Q. 358. You went out there especially to see him, didn't you?

A. Yes, sir.

X Q. 359. Who gave you his place of business?

A. I got that of the folks.

336 X Q. 360. His people reside in Rochester?

A. Yes, sir.

X Q. 361. Whereabouts?

A. On Hand street.

X Q. 362. Did you go there to see them?

A. Yes, sir; I asked them.

X Q. 363. At whose request did you go there?

A. At the request of Mike Magin.

X Q. 364. What did he tell you about going there?

A. To see if I couldn't get the direction of Otto Hahn—where he lived.

X Q. 365. And after getting his address you went to Chicago?

A. Yes, sir.

X Q. 366. Did you make arrangements with Mr. Hahn about coming to Rochester if wanted?

A. Mr. Magin requested me to write him a letter to let him know whenever the time came for the trial—to let him know.

X Q. 367. Mr. Magin asked you to write Mr. Hahn a letter?

A. Yes, sir.

X Q. 368. And you done so, didn't you?

A. Yes, sir.

X Q. 369. Before you went to Chicago or after your return?

A. After I returned.

X Q. 370. Did you make arrangements with Mr. Hahn to pay his expenses when he came down?

337 A. I told him his expenses would be paid.

X Q. 371. Did you tell him Mr. Magin said so?

A. Yes, sir.

A Q. 372. Did he say he would come?

A. I don't know; I didn't get no letter. He wrote to Mr. Magin.

X Q. 373. You wrote to Mr. Magin while you were in Chicago?

A. No, sir; Hahn wrote to Mr. Magin.

X Q. 374. Did you see that letter?

A. No, sir.

X Q. 375. Who told you he wrote to Mr. Magin?

A. Mike told me he received the letter.

X Q. 376. Did you tell Mr. Hahn why you wanted this affidavit?

A. No, sir; I didn't know nothing about it and only asked him what he knowed about the apparatus.

X Q. 377. Did you tell Mr. Hahn that there was a trial had between Mr. Magin and the saloon-keepers here in Rochester and that Mr. Magin was beaten?

A. No, sir.

X Q. 378. Didn't you tell him that you wanted this affidavit to get Mr. Magin a new trial?

A. No, sir.

X Q. 379. You knew that was the use to be made of this affidavit, didn't you?

A. I didn't know.

X Q. 380. Who first spoke to you about getting up these affidavits?

338 A. Mike Magin asked me whether I wouldn't give my affidavit, what he should ask me.

X Q. 381. Where was this conversation had?

A. Mike Magin came down to the store where I worked.

X Q. 382. He came to your store?

A. Yes, sir.

X Q. 383. Did he come alone?

A. Yes, sir; he came alone.

X Q. 384. And did you accompany him to his saloon?

A. No, sir.

X Q. 385. When did you have this first talk with Mr. Magin?

A. Mr. Magin came to the store on Thursday and asked me whether my name was——

X Q. 386. What month and year was that?

A. That was in October.

X Q. 387. Can you give the year?
A. In 1880, I believe.
X Q. 388. Did he tell you he had a lawsuit with the saloonkeepers about his apparatus?
A. No, sir.
X Q. 389. Where did you have the next talk with Mr. Magin?
A. I didn't have no talk any further.
X Q. 390. Is that the only talk you ever had with Mr. Magin about this apparatus?
A. Yes.
X Q. 391. Did you never go to his saloon and talk to him about it?
339 A. I went to his saloon to drink a glass of beer once in awhile.
X Q. 392. Didn't you talk with him about the Meinhard apparatus while there?
A. No, sir.
X Q. 393. Didn't you talk with him about this apparatus anywhere else?
A. No, sir.
X Q. 394. Never had but this one talk with him about this apparatus?
A. No, sir.
X Q. 395. And that was where?
A. Wile, Brickner & Wile's.
X Q. 396. Who was present during that conversation?
A. Him and I were alone.
X Q. 397. How often since that talk did you visit Magin's saloon?
A. Occasionally.
X Q. 398. How often?
A. Once or twice a week.
X Q. 399. Did you go there alone?
A. Yes, sir.
X Q. 400. Did you see Mr. Magin?
A. I went there to drink my glass of beer.
X Q. 401. And talk about this Meinhard apparatus?
A. No, sir.
X Q. 402. Didn't he describe this apparatus to you?
340 A. No, sir.
X Q. 403. Did you describe it to him in his saloon?
A. No, sir.
X Q. 404. Where did you first see this model, "Complainant's Exhibit Meinhard's Apparatus"?
A. I saw it here and I seen it up in Mr. Cronise's.
X Q. 405. That was the time you made an affidavit?
A. Yes, sir.
X Q. 406. Was Mr. Magin with you that time?
A. He was there when I gave my affidavit.
X Q. 407. He went with you there?
A. No, sir.

X Q. 408. Did you meet him there by appointment?
A. I went there, and after I was there Mr. Magin came there.
X Q. 409. Didn't you tell Mr. Magin that you would be there at a particular time?
A. I didn't tell exactly whether I would be there at a particular time. I said I would go there this forenoon.
X Q. 410. Did you fix any hour that you would be there?
A. No, sir.
X Q. 411. He asked you to go there on a particular day?
A. He asked me to go there, and if I was willing to give my affidavit I would.
341 X Q. 412. Before giving that affidavit you and Mr. Magin had talked a good deal about this apparatus?
A. No, sir.
X Q. 413. Didn't he tell you what Meinhard claimed about this apparatus?
A. No, sir.
X Q. 414. Didn't he tell you that Meinhard claimed that the beer-supply pipes in this apparatus had a covering on them?
A. No, sir.
X Q. 415. Didn't he tell you that that was a very important part of this litigation to show that fact?
A. He didn't say nothing about the apparatus.
X Q. 416. Did he tell you how many coolers there were in it?
A. No, sir.
X Q. 417. Didn't he tell you that Mr. Meinhard claimed that Mr. Cassebeer took out these coolers in 1878?
A. No, sir.
X Q. 418. Who else besides Otto Hahn have you talked with about this apparatus?
A. I asked Raymond Stief whether he could remember anything about the cooling apparatus at Falls Field.
X Q. 419. Did I ask you what you asked Raymond Stief?
A. You asked me whether I had any talk with anybody else about this apparatus.
342 X Q. 420. Yes; and that was all I did ask you. Did you have a talk with any one else?
A. I had with Raymond Stief.
X Q. 421. And who else?
A. And George Englert.
X Q. 422. And who else?
A. George Englert and Henry Koehler.
X Q. 423. And who else?
A. That is all I remember.
X Q. 424. Did you have a talk with Mr. Englert's brother?
A. No, sir.
X Q. 425. Where did you have the talk with Mr. Koehler?
A. I met him, I believe, at Mr. Magin's place.
X Q. 426. Did you ask him to come to Mr. Magin's?
A. I asked him whether he wouldn't come down; that Mr.——

X Q. 427. I didn't ask what you said. Did you ask him to come to Mr. Magin's?

A. Yes, sir.

X Q. 428. And you met him there, did you?

A. Yes, sir.

X Q. 429. Did you tell him you would be there?

A. I told him I would be there.

X Q. 430. Where did you have the talk with Raymond Stief?

A. I met Raymond Stief at the place where he was employed.

343 X Q. 431. You went there to see him, did you?

A. Yes, sir.

X Q. 432. At whose request?

A. I went there at Mr. Magin's request.

X Q. 433. Mr. Magin told you to go and see Mr. Stief, did he?

A. He told me to go there.

X Q. 434. Did you ask Mr. Stief to come to Mr. Magin's with you?

A. I told Mr. Stief——

X Q. 435. I asked you if you asked Mr. Stief to come to Mr. Magin's with you?

A. I asked him to come to Mr. Magin's.

X Q. 436. And did he come down?

A. He came down after 12 o'clock.

X Q. 437. Did you meet him at Mr. Magin's?

A. Yes, sir; I met him there after that.

X Q. 438. And you talked about this apparatus there?

A. No, sir.

X Q. 439. Didn't you have a talk with Mr. Stief in Mr. Magin's about this apparatus?

A. No, sir; I asked him before whether he could remember anything about this——

X Q. 440. I didn't ask that, did I?

A. No.

Complainant's counsel instructs witness to finish his answer and take no notice of the course pursued by defendants' counsel in interrupting.

344 Defendants' counsel requests complainant's counsel to allow witness to answer questions without interruptions, and the witness is again requested to simply answer the question asked and nothing more.

X Q. 441. Now, Mr. Witnesss, do you understand what I want of you?

A. Please proceed.

Complainant's counsel instructs the witness that he is the judge of the way in which he shall answer the question propounded and to answer them as he sees fit, without any reference to whether they do or do not suit Mr. Sullivan.

The witness is again requested to answer the question and nothing more.

X Q. 442. How long did you remain at Mr. Magin's with Mr. Steif on that occasion?

A. I don't remember.

X Q. 443. About how long would you say?

A. It may be half an hour and maybe an hour. I can't tell exactly.

X Q. 444. Was Mr. Magin present during the whole conversation?

A. Mr. Magin was talking all alone to this Mr. Stief.

X Q. 445. Didn't you join in the conversation?

A. No, sir.

X Q. 446. Do you know what he said to Mr. Stief?

A. I don't know.

X Q. 447. Did you and Mr. Stief leave Mr. Magin's together?

345 A. No, sir.

X Q. 448. Who left first?

A. He had to go to work.

X Q. 449. Who left first, you or Mr. Stief?

A. Stief, I believe, did.

X Q. 450. And how long did you remain in Mr. Magin's after Mr. Stief left?

A. I went home to dinner.

X Q. 451. How long did you remain in Mr. Magin's after Mr. Stief left?

A. I went but a short time after.

X Q. 452. How long after?

A. About five or ten minutes.

X Q. 453. Did you talk with Mr. Magin about what Mr. Stief knew about this apparatus before you went away?

A. No, sir.

X Q. 454. Did Mr. Magin tell you what Mr. Stief told him?

A. No, sir.

X Q. 455. Did you have a talk with Mr. Stief about this apparatus after that?

A. No, sir.

X Q. 456. Have you seen him since that time?

A. I see him, off and on, on the street.

X Q. 457. Did you talk with him?

A. I talked with him occasionally about different things.

X Q. 458. But you didn't talk with him about this Meinhard apparatus?

346 A. No, sir.

X Q. 459. How many times have you talked with him after meeting him Magin's saloon?

A. It might have been half a dozen times and it might have been twenty times that I met him on the street and several places.

X Q. 460. Where did you meet him?

A. I met him down at the lake and met him here in the city.

X Q. 461. Whereabouts in the city did you meet him?
A. At the places where I was to come and he was to come.
X Q. 462. Where was that?
A. All over the city.
X Q. 463. Whereabouts?
A. Clinton street, and mostly on Clinton street and around there.
X Q. 464. Did you meet him in any of the saloons?
A. Yes, sir.
X Q. 465. What saloons did you meet him in?
A. I met him at the corner of Hand and Clinton streets.
P. Q. 496. Who keeps that saloon?
A. I don't know who keeps it now?
X Q. 467. Who kept it at that time?
A. A fellow named Jacob Kramp.
X Q. 468. That is near where Mr. Stief lived at that time, was it?
347 A. No, sir; he lived on Galusha street.
X Q. 469. Isn't Galusha street near Hand street?
A. No, sir.
X Q. 470. How far from it is it?
A. It might be from half a mile to a mile
X Q. 471. Did you live near Hand street?
A. I lived on Joiner street—that is, on Hopeman place, off Joiner street.
X Q. 472. How did you happen to meet at this saloon at the corner of Hand and Joiner street?
A. Go there for a glass of beer.
X Q. 473. Are you in the habit of going there quite often?
A. No, sir; not quite often.
X Q. 474. How often did you meet Mr. Stief there?
A. Several times that he has been there playing pool.
X Q. 475. Did you play pool with him?
A. No, sir.
X Q. 476. Where did you meet Mr. Koehler?
A. At Magin's place.
X Q. 477. How often did you meet him there?
A. I met him there only once.
X Q. 478. That was the time you asked him to meet you there?
A. Yes, sir.
X Q. 479. Did you talk with him about the Meinhard apparatus on that occasion?
348 A. No, sir.
X Q. 480. Did Mr. Magin talk with him?
A. I don't know.
X Q. 481. Did you hear him talk with Mr. Koehler?
A. No, sir.
X Q. 482. How long did Mr. Koehler remain in Mr. Magin's?
A. I couldn't say.
X Q. 483. Did he leave Mr. Magin's before you did or after?
A. He did before I did.

X Q. 484. Didn't you talk with Mr. Magin about Koehler's testimony after Mr. Koehler left?

A. No, sir.

X Q. 485. Didn't Mr. Magin tell you what Mr. Koehler knew about the Meinhard apparatus?

A. He didn't say nothing to me.

X Q. 486. Where else did you see Mr. Koehler besides in Mr. Magin's?

A. I saw him on the street going to work.

X Q. 487. Did you see him anywhere else but on the street?

A. I met him once or several times on a place on Kelley street where he used to hang out.

X Q. 488. How often did you meet him there?

A. I don't know; I didn't keep the times.

X Q. 489. How often would you say?

A. It is hard telling; I met him often.

X Q. 490. How many times?

349 A. It might have been a dozen times and it might have been more than that.

X Q. 491. What was he doing there?

A. Drinking beer.

X Q. 492. What were you doing there?

A. Drinking beer.

X Q. 493. Did you drink together?

A. Each one drank for himself.

X Q. 494. Did you talk with each other?

A. Certainly.

X Q. 495. Did you talk about this Meinhard apparatus?

A. No.

X Q. 496. You didn't say anything about it?

A. No, sir.

X Q. 497. Did you say anything about his testimony in the case?

A. No, sir.

X Q. 498. Didn't you ask him to make an affidavit in the case?

A. I didn't ask him any such thing.

X Q. 499. Did he make an affidavit in the case?

A. I suppose by the request of Mr. Magin.

X Q. 500. You never asked him to make an affidavit?

A. I never asked him anything.

X Q. 501. Does he live near Kelly street.

A. I don't know where he lives now. He used to live with his folks.

350 X Q. 502. Where was that?

A. His folks lived on Thomas street.

X Q. 503. What is his business?

A. I don't know what he is doing now. He used to be tailoring.

X Q. 504. How did you happen to meet him on Kelly street?

A. We generally go there to our hang-out, in that place I have reference to.

X Q. 505. Who kept the place?

A. A fellow named Gore.

X Q. 506. Is that on the corner of Kelly and Clinton?
A. Corner of Kelly and Chatham.
X Q. 507. That was the place that you and Koehler were in the habit of spending the evening occasionally?
A. Yes, sir.
X Q. 508. Was Raymond Stief ever there with you?
A. No, sir.
X Q. 509. You never met Stief at that place?
A. I might have met him there, but I don't recollect that I ever saw him there.
X Q. 510. Did you ever meet Mr. Koehler on the corner of Hand and Clinton street-?
A. I don't recollect that I ever did.
X Q. 511. That is the place where you met Mr. Stief, was it?
A. That was the place where I met him.
351 X Q. 512. Where did you have your first talk with Mr. George J. Englert about the Meinhard apparatus?
A. I met George Englert on the corner of Baden and St. Joseph street-.
X Q. 513. Did you go there to see him?
A. No, sir.
X Q. 514. Does he live there?
A. I don't know; he used to live on Vienna street.
X Q. 515. Did you try to find him before that time?
A. No, sir; I happened to meet him.
X Q. 516. Did you have a talk with him on that occasion?
A. Yes, sir; I asked him——
X Q. 517. I asked you if you had a talk with him.
A. Yes, sir, I said.
X Q. 518. Did you talk with him about this apparatus?
A. I asked him whether he knowed anything or whether he could recollect the apparatus kept on Falls Field, and he said he could.
X Q. 519. Did you ask him to come to Mr. Magin's?
A. I asked him whether he would come to Mr. Magin's; that he would like to see him.
X Q. 520. What did he say?
A. He said he would.
X Q. 521. Did you meet him there?
352 A. No, sir.
X Q. 522. Were you there when he came there?
A. No, sir.
X Q. 523. Did you ever meet Mr. Englert in Mr. Magin's?
A. Yes, sir; he brings pop there and sells pop.
X Q. 524. For whom?
A. I don't know who he sells pop for.
X Q. 525. He delivers pop at Mr. Magin's saloon, does he?
A. Yes, sir.
X Q. 526. Does he drive a wagon for the man who manufactures this pop?
A. I don't know.

X Q. 527. How often have you seen him at Mr. Magin's?
A. I saw him there once or twice that I was in there drinking beer.
X Q. 528. Did you have a talk with him?
A. I talked with him on every-day business.
X Q. 529. You didn't talk with him about the Meinhard apparatus?
A. No, sir.
X Q. 530. Did he tell you he was going to be a witness in the case?
A. He didn't say nothing to me.
X Q. 531. Did Mr. Magin tell you he was going to be a witness in the case?
A. No, sir.
X Q. 532. Did you know he was to be a witness in the case?
353 A. No, sir.
X Q. 533. Did you meet him anywhere else except at Mr. Magin's?
A. On the street, in his wagon.
X Q. 534. You had no conversation with him on the street?
A. Not that I recollect.
X Q. 535. Did you meet him anywhere else except on the street and at Mr. Magin's?
A. No, sir.
X Q. 536. How often did you meet him at Mr. Magin's?
A. About once or twice.
X Q. 537. How often did you meet him on the street?
A. I would meet him on the street occasionally when I was about on business myself.
X Q. 538. Did you have a talk with him on the street?
A. No, sir.
X Q. 539. When was the last time you saw him at Mr. Magin's?
A. That is some time ago.
X Q. 540. How long ago?
A. It might have been a couple of months ago.
X Q. 541. Was that on a Sunday that you met him there?
A. No, sir.
X Q. 542. On a week day?
A. Yes, sir.
X Q. 543. What time of day?
354 A. It was in the evening.
X Q. 544. And he came there in the evening, did he?
A. Yes, sir.
X Q. 545. How long did you remain on that occasion?
A. I had a glass of beer and went off again.
X Q. 546. Did he have a glass of beer also?
A. I don't know whether he drank anything or not.
X Q. 547. Did you talk with him on that occasion?
A. Yes, sir; I had a talk with him.
X Q. 548. How long have you known Mr. Englert?
A. I knew him when he was employed by Mr. Meinhard.

X Q. 549. You first became acquainted with him when he was working for Mr. Meinhard?

A. Yes, sir.

X Q. 550. Did you ever talk with his brother, John V. Englert?

A. No, sir.

X Q. 551. Did you know his brother, John V. Englert?

A. Yes, sir; I know him.

X Q. 552. Have you ever met him at Mr. Magin's?

A. No, sir.

X Q. 553. Did you ever meet him at any place?

A. I see him on his beer wagon when he is out peddling.

355 X Q. 554. Who does he peddle beer for?

A. I think he is peddling for the Genesee, but I don't know.

X Q. 555. Wasn't he in Mr. Cronise's office the day you were there?

A. No, sir.

X Q. 556. Who did you see in Mr. Cronise'- office besides Mr. Magin?

A. There was Mr. Gordon there, I believe.

X Q. 557. Mr. Gordon there?

A. Yes, sir.

X Q. 558. Who else?

A. Nobody else.

X Q. 559. Was Mr. Koehler there?

A. No, sir.

X Q. 560. Mr. Gordon is the gentleman who is the patentee of this invention, is he not?

A. I don't know.

X Q. 561. Didn't Mr. Magin tell you Mr. Gordon here was interested in this suit?

A. No, sir.

X Q. 562. Did you ever see Mr. Gordon before?

A. I saw him occasionally, but I never knew who he was.

X Q. 563. Did you ever see him in Mr. Magin's saloon?

A. He goes in there, I suppose, once in awhile.

X Q. 564. How often did you see him in Mr. Magin's saloon?

A. I don't know.

356 X Q. 565. About how often?

A. I couldn't tell.

X Q. 566. Did you see him more than once?

A. No, sir.

X Q. 567. Never saw him more than once there?

A. That is all.

X Q. 568. Did you see him twice there?

A. I couldn't tell; I see so many persons.

X Q. 570. How do you know he was Mr. Gordon?

A. Because I know he keeps a brewery.

X Q. 571. He is a member of the firm of Gordon & Hathaway?

A. Yes, sir.

X Q. 572. How long have you known him as such?

A. Pretty near since I am in the line of bar-tending.

X Q. 573. Then you have known him about eight or ten years?
A. Yes, sir; about that time.
X Q. 574. Where else besides at Mr. Magin's have you seen Mr. Gordon?
A. On the street.
X Q. 575. You also saw him at Mr. Cronise'-, didn't you?
A. Yes, sir; he was there.
X Q. 576. Was he there when you arrived there?
A. No, sir.
X Q. 577. He came there while you were there, did he?
357 A. He came after I got there.
X Q. 578. Did he come with Mr. Magin?
A. I guess so.
X Q. 579. Didn't you tell Mr. Magin that you would be there at a certain time?
A. No, sir.
X Q. 580. How long did Mr. Gordon remain there?
A. I don't know.
X Q. 581. He was there when you left, was he?
A. He was there when I left.
X Q. 582. Did you go away with Mr. Magin?
A. No, sir.
X Q. 583. Did you see Mr. Raymond Stief there on that occasion?
A. No, sir.
X Q. 584. Didn't you go there with Mr. Raymond Stief?
A. No, sir.
X Q. 585. Did you ask Mr. Raymond Stief to go there?
A. No, sir.
X Q. 586. Who else besides Mr. Raymond Stief and Mr. Henry Koehler and George J. Englert have you talked with about this Meinhard apparatus?
A. There is one other party that I asked whether he knowed anything about it.
X Q. 587. Who is he?
A. His name is Henry Weiland.
358 X Q. 588. Where did you see him?
A. I met him—I don't know where.
X Q. 589. Where does he live?
A. I don't know exactly the name of the street. He lives in the Thirteenth ward somewhere.
X Q. 590. Did you ask him to come to Mr. Magin's?
A. Yes, sir.
X Q. 591. Did he come?
A. Yes, sir; he was there.
X Q. 592. Were you there at the time?
A. I was there at the time.
X Q. 593. Was Mr. Magin there?
A. I don't know whether he was there or not, and I couldn't say.
X Q. 594. When was it that you were there; on a Sunday?
A. No, sir; on a week day.
X Q. 595. Forenoon or afternoon.

A. I believe it was in the forenoon.
X Q. 596. How long did you remain there?
A. Not very long.
X Q. 597. About how long?
A. I never staid there longer than half an hour or so.
X Q. 598. Was Mr. Magin in the saloon on that occasion?
A. I couldn't say whether he was in or not.
359 X Q. 599. Did you talk with Mr. Weiland about this Meinhard apparatus while in Magin's saloon?
A. I asked him whether he knowed anything about or whether he could recollect anything about Meinhard's apparatus.
X Q. 600. Was this conversation before you went to Magin's saloon or after?
A. Before I went to Magin's saloon.
X Q. 601. Where was the conversation had?
A. I don't exactly know.
X Q. 602. Was it on the street?
A. I don't know if it was on the street or where it was.
X Q. 603. After going to Magin's saloon didn't you also talk with him about the Meinhard apparatus?
A. No, sir.
X Q. 604. Did Mr. Magin talk with him about it?
A. I don't know.
X Q. 605. What did you talk about while in Mr. Magin's saloon with Mr. Weiland?
A. Talked about several things.
X Q. 606. But you didn't talk about the Meinhard apparatus?
A. Never talked about the apparatus.
X Q. 607. Did Mr. Magin talk with him about the apparatus?
A. I don't know.
X Q. 608. Did you meet Mr. Weiland more than once there?
360 A. No, sir.
X Q. 609. Have you met Mr. Weiland since?
A. I see him off and on, on the street.
X Q. 610. Talk with him?
A. Bid him the time, "How do you do?" or "Good morning."
X Q. 611. Did you have any other conversation than that?
A. No, sir.
X Q. 612. Have you met him at any other of the saloons?
A. No, sir.
X Q. 613. How many times have you met Mr. Weiland on the street?
A. Generally met him either mornings or at noon time.
X Q. 614. Did he tell you he was going to be a witness in this case?
A. No, sir.

Recess until 2.15 p. m.

2.15 P. M.

X Q. 615. Where did you first see this model, "Defendants' Exhibit Meinhard Apparatus"?

A. Here.

X Q. 616. In Mr. Selden's office?

A. Yes, sir; right here.

X Q. 617. Who showed it to you?

A. That was the first I ever seen it.

X Q. 618. Who showed it to you here?

361 A. Mr. Bennett showed it to me this morning.

X Q. 619. When?

A. This forenoon.

X Q. 620. Did he also show you the model "Complainant's Exhibit Meinhard Apparatus" at the same time?

A. Yes, sir.

X Q. 621. Did he explain to you the model "Defendants' Exhibit Meinhard Apparatus"?

A. He didn't explain nothing to me.

X Q. 622. Didn't he call your attention to these rubber pipes?

A. He called my attention to them.

X Q. 623. Did he also call your attention to the coolers in the upper ice box?

A. No, sir.

X Q. 624. Did he say anything about the coolers?

A. No, sir.

X Q. 625. Did he tell you that Mr. Meinhard claimed that there was a rubber hose over the supply pipes as shown on this model?

A. No, sir.

X Q. 626. Didn't he tell you that defendants' witnesses testified to that fact?

A. No, sir.

X Q. 627. Didn't he tell you that Albert Stief and Ernest Schaub and Mr. Cassebeer and Mr. Meinhard testified to the fact that there was a rubber hose over the beer-supply pipes as shown on this model?

362 A. No, sir.

X Q. 628. Did Mr. Magin tell you so?

A. No, sir.

X Q. 629. Did Mr. Gordon so tell you?

A. No, sir.

X Q. 630. Did any one ever so tell you?

A. No, sir.

X Q. 631. In the conversation which you had with Mr. Magin didn't he tell you what the defendants' witnesses had testified to about this rubber hose being over the supply pipes?

A. No, sir.

X Q. 632. Didn't Mr. Magin tell you Mr. Meinhard claimed that there was rubber hose over the supply pipes?

A. No, sir.

X Q. 633. When did you have the first talk with Mr. Bennett about this Meinhard apparatus?

A. This forenoon.

X Q. 634. Where was that talk had?

A. I met Mr. Bennett at Powers' hotel, where he asked me what I knew about this apparatus.

X Q. 635. Who went there with you?

A. Mr. Magin.

X Q. 636. Did you go to Mr. Magin's saloon this morning?

A. No, sir.

X Q. 637. Where did you meet Mr. Magin?

A. Mr. Magin came down to the place where I worked.

363 X Q. 638. And you accompanied him to meet Mr. Bennett?

A. He asked me——

X Q. 639. I asked if you accompanied Mr. Magin to Powers' hotel to meet Mr. Bennett.

A. Yes, sir.

X Q. 640. Is that the first time you met Mr. Bennett?

A. Yes, sir.

X Q. 641. When did you have the first talk with Mr. Selden about this Meinhard apparatus?

A. I never had no talk with Mr. Selden.

X Q. 642. Have you ever been to his office before?

A. No, sir.

X Q. 643. Have you never been in this office until to-day?

A. Until to-day.

X Q. 644. The first time?

A. Yes, sir.

X Q. 645. Did you ever meet Mr. Selden anywhere else?

A. No, sir; I never knowed Mr. Selden before.

X Q. 646. Did you give the names of Raymond Stief, Henry Koehler, George J. Englert, and others to Mr. Magin as parties who knew about this apparatus?

A. Yes, sir.

X Q. 647. And after giving those names to Mr. Magin you saw these different parties, did you?

364 A. Yes, sir.

X Q. 648. Did you ever talk with Mr. Albert Stief about this apparatus?

A. Yes, sir.

X Q. 649. How large was this upper ice box of this apparatus?

A. The upper ice box was about from two to three feet high.

X Q. 650. And how wide?

A. About two feet.

X Q. 651. And how deep?

A. About a foot or so, or a foot and a half?

X Q. 652. And how large was the lower ice box?

A. The lower ice box was about 6 x 8 or so.

X Q. 653. 8 which way?

A. From east to west.

X Q. 654. And 6 feet which way?

A. From south to north or north to south.

X Q. 655. And how high was it?

A. About 8 feet or so.
X Q. 656. The height of the cellar?
A. Yes, sir.
X Q. 657. Did it run up to the ceiling of the cellar?
A. Yes, sir.
X Q. 658. Did it have a door in it?
A. Yes, sir.
X Q. 659. Whereabouts was the door?
365 A. Pretty near in the center of the box, on the north side.
X Q. 660. Was the lower ice box lined?
A. I believe it was lined.
X Q. 661. What was it lined with?
A. I couldn't tell. I couldn't see into it.
X Q. 662. You went in there with a candle, did you not?
A. Yes, sir.
X Q. 663. Lighted?
A. Yes, sir.
X Q. 664. And while in there with a lighted candle couldn't you see the lining if you had examined it?
A. I couldn't see what there was in between the lining.
X Q. 665. You mean you couldn't see what was between the inside and outside casing?
A. No, sir.
X Q. 666. Was the lower box lined up on the inside of it?
A. The inside went clear up to the flooring.
X Q. 667. It had an inside casing and an outside casing of wood, did it?
A. Yes, sir.
X Q. 668. And was it filled in between the casings?
A. I don't know.
X Q. 669. You never examined that?
A. I never examined that.
366 X Q. 670. Was the inside casing lined with anything?
A. There was wood.
X Q. 671. Nothing else but wood?
A. Nothing but wood.
X Q. 672. Did it have a bottom to it?
A. There was a floor.
X Q. 673. What kind of a floor was it?
A. Wooden floor.
X Q. 674. A tight floor, was it?
A. As tight as water will make it, sometimes.
X Q. 775. It had no rack in the bottom, then?
A. No, sir.
X Q. 676. Did it have a sewer connected with it?
A. There was a sewer right under the beer rack where they tapped the beer, that the beer kegs lay on *on*.
X Q. 677. That was to carry off the melted ice water?
A. Yes, sir; and the refuse of the kegs.
X Q. 678. Wasn't this lower ice box lined with sheet iron?
A. No, sir.

X Q. 679. Certain of that?
A. No, sir; nothing lined.
X Q. 680. Neither top nor bottom nor sides?
A. No, sir.
X Q. 681. What was the size of the hole through which these beer-supply pipes entered the lower ice box?
367 A. It was about 2 inches wide and about 6 or 8 inches long, cut through the partition.
X Q. 682. 6 or 8 inches which way?
A. Up and down.
X Q. 683. And what was the size of the hole in the ceiling through which these supply pipes went?
A. I don't know; I never measured it.
X Q. 684. What size was it, should you say?
A. I can't say exactly; I never measured it and never exactly looked at it.
X Q. 685. You never examined it, did you?
A. No, sir.
X Q. 686. So you don't know the size of it?
A. No, sir.
X Q. 687. Was it a round hole or a square hole?
A. I couldn't say.
X Q. 688. How far was this hole in the lower ice box from the top of the box?
A. From about a foot and a half to two foot.
X Q. 689. What was the length of these beer-supply pipes?
A. They were about from eight to ten feet.
X Q. 690. And what was the length of the rubber hose which was attached to the lower end of the beer-supply pipes?
A. About two or two and a half.
X Q. 691. Were there shelves to hold ice on three sides of this lower ice box?
A. Yes, sir.
368 X Q. 692. Was there a shelf on the east side?
A. Yes, sir.
X Q. 693. Did the beer-supply pipes run below the shelf?
A. They run above the shelf.
X Q. 694. And then the rubber pipes, I suppose, extended up above the shelves and connected with the beer-supply pipes?
A. No, sir.
X Q. 695. How was that?
A. There was about five or six inches sticking over the shelving from the lead pipe, and from that on the rubber hose was connected.
X Q. 696. Then the lead pipes extended four or five inches below the shelf?
A. About five or six inches over the shelf.
X Q. 697. Do you mean above the shelf or below it?
A. Over the shelf.
X Q. 698. What do you mean by over the shelf?
A. Above, over the shelf.
X Q. 699. Do you mean to be understood that the lead pipes went

down to within four or five or six inches of this shelf and then stopped?

A. No, sir.

X Q. 700. Then what do you mean by that?

A. When they come through that hole on the east side they run slanting over the shelf and stuck over the shelf about five or six inches.

X Q. 701. Then they extended five or six inches below the shelf?

369 A. That is, over the shelf.

X Q. 702. Rested on the edge of the shelf, did they?

A. Yes, sir.

X Q. 703. And were they all the same?

A. They were all the same sized pipes.

X Q. 704. And all extended about the same way over the shelf?

A. About the same length.

X Q. 705. Was there ice on these shelves?

A. Yes, sir.

X Q. 706. Did they use an air-pressure pump in connection with this apparatus?

A. There was an air pump upstairs.

X Q. 707. Whereabouts in the lower ice box was this air reservoir?

A. Under the east-side shelf.

X Q. 708. How large was it?

A. It might have been from two to four inches in diameter, but I don't know exactly. I never sized it up. It might have been smaller or larger.

X Q. 709. And how long was it?

A. About four or five feet or something, I guess.

X Q. 710. And was there connected to that air reservoir rubber tubes which ran to each beer keg?

A. Yes, sir; there was a little rubber hose attached to each tap cock there to force the pressure on the beer barrel that was there.

X Q. 711. When was that put there?

370 A. That was there when I got there.

X Q. 712. Was there any change made in this apparatus while you were working there?

A. No, sir.

X. Q. 713. Didn't they change this air pump while you were there?

A. No, sir.

X Q. 714. Do you know Joe Wolf?

A. Yes, sir.

X Q. 715. Did you see him doing any work there at any time?

A. No, sir.

X Q. 716. Whereabouts did this air pipe run into the lower ice box?

A. The air pipe run under the east-side shelf.

X Q. 717. Did that run in the same hole as the beer-supply pipes?

A. No, sir.

X Q. 718. Whereabouts did that go in?

A. I couldn't say; I never paid any particular attention to that air pipe from the air pump running into the lower ice box.

X Q. 719. What was the size of that air pipe?

A. About half an inch.

X Q. 720. Half an inch in diameter?

A. Half an inch across?

X Q. 721. Don't you know that that air pump went into the same opening that the beer-supply pipes did?

A. No, sir.

371 X Q. 722. What is your best recollection as to that?

A. All I seen, them beer-supply pipes entered, and never noticed the air pipe to force the beer up.

X Q. 723. Were those beer-supply pipes lined?

A. No, sir.

X Q. 724. Did you ever examine them?

A. I always seen them when I had business down in the cellar.

X Q. 725. And you looked at them, did you?

A. I couldn't help but see them off and on.

X Q. 726. Did you examine the air pipe?

A. The air pipe—I always had that before my eyes—the cylinder where the air was kept in.

X Q. 727. What kind of material was this air pipe made of?

A. That was a little rubber hose.

X Q. 728. I mean the air pipe from the pump to the reservoir.

A. That was a rubber hose.

X Q. 729. How long was that?

A. I couldn't say how long that was.

X Q. 730. How many feet should you say it was?

A. About from 8 or 10 feet.

X Q. 721. The distance from the air pump to the reservoir?

A. Yes, sir.

X Q. 732. And then from the reservoir there was also little branch rubber pipe run from the kegs containing the beer?

372 A. Yes, sir; to force the beer up.

X Q. 733. What was the size of that rubber pipe that ran from the pump to the air reservoir?

A. That was a common-sized, small-size rubber hose.

X Q. 734. What size was that?

A. It might have been a quarter or from a quarter of an inch to a half inch in thickness.

X Q. 735. Did you have occasion to change that rubber hose while you were there?

A. Never changed it and only had to fasten the bungs if they should break or the copper wire should break; would have to fasten it on again.

X Q. 736. Did you ever have occasion to make any connection between the air pump and this rubber hose upstairs?

A. No, sir.

X Q. 736. What connections did you ever make on this rubber hose?

A. The only connection I made was with the supply pipes and the beer kegs.

X Q. 738. Then you didn't make any connections between the rubber hose that ran from the air pipe down to the air reservoir?

A. No, sir.

X Q. 739. You never changed that?

A. With the exception when I had to tap a beer to rung the bung in that was connected with the reservoir.

X Q. 740. Was the rubber pipe which ran from the air
373 reservoir to the beer kegs the same size as the rubber pipe that ran from the air pump to the air reservoir?

A. It might have been a little smaller size. I don't recollect exactly.

X Q. 741. What was the size of the pipe that connected the air reservoir with the beer keg?

A. About from a quarter of an inch to a half an inch.

X Q. 742. And what do you say the size of the other was?

A. About half an inch or so.

X Q. 743. How many of these beer-supply pipes were there?

A. There was about three.

X Q. 744. Were they always in use?

A. There was only two in use.

X Q. 745. And they were all of the same material, were they?

A. Yes, sir; of the same material.

X Q. 746. How were those coils connected with the beer-supply pipes?

A. The pipes ran right after they left the coils—ran right through the floor and went off slanting to the wine cellar and to the lower ice box.

X Q. 747. How was the coil attached to the faucets upstairs?

A. The end of each coil raised up a little and they had to fasten the fastenings to it.

X Q. 748. They had couplings, did they?

A. It was soldered on.

374 X Q. 749. The end of the coil was fastened onto the faucet?

A. Yes, sir.

X Q. 750. It had no coupling, then?

A. No, sir; had no coupling.

X Q. 751. How was it about the other end of coil? Was that also soldered onto the beer-supply pipe?

A. That was soldered into the bottom of the upper ice box.

X Q. 752. And how was the beer-supply pipe fastened to the coils?

A. That was one piece.

X Q. 753. You say the coils were soldered into the top of the upper ice box?

A. They were soldered in the upper ice box.

X Q. 754. Were they soldered into the bottom of the box?

A. I don't know. I couldn't look to that.

X Q. 755. You never had occasion to take them out, had you?
A. No, sir.
X Q. 756. Did you ever look into the bottom of the upper ice box?
A. I couldn't on account of the coils laying in there.
X Q. 757. The coils covered the whole bottom, did they?
A. They covered the whole of the inside of the upper ice box.
X Q. 758. So a person looking into the bottom of the upper ice box couldn't see the bottom?
375 A. Could see the coils and the water laying on top of the coils.
X Q. 759. Did you ever have occasion to take coils out while you were there?
A. No, sir.
X Q. 760. Did you see any person take them out?
A. No, sir.
X Q. 761. Was there a cupboard under this upper ice box?
A. No, sir.
X Q. 762. Was it closed up?
A. It was closed up entirely.
X Q. 763. Nothing kept in that lower part of the box?
A. No, sir.
X Q. 764. And had no doors to it?
A. No, sir; had no doors to it whatever.
X Q. 765. After those supply pipes went through the floor of the saloon what direction did they take?
A. They went right straight over towards the wine cellar.
X Q. 766. That is south?
A. They went south.
X Q. 767. How many feet south did they go?
A. About eight or nine feet or so.
X Q. 768. And then went through the wine cellar, did they?
A. They went through the wine cellar and entered on the east side of the lower ice box, near the northwest corner.
376 X Q. 769. Did the pipes, after they passed through the floor of the saloon, run directly south or a little east or west?
A. They run straight ahead.
X Q. 770. Right along the ceiling, did they?
A. They hung down a little ways.
X Q. 771. About how much would you say?
A. A couple of inches or about six or so.
X Q. 772. So a person looking up at the ceiling there would have no difficulty in seeing them?
A. No, sir.
X Q. 773. How much could be seen there?
A. All of them.
X Q. 774. Could you see as much as seven or eight feet of the pipes?
A. Yes, sir.
X Q. 775. How many of these pipes were they?
A. About three.

X Q. 776. And what was the size of these pipes?

A. Common-sized pipes, half inch.

X Q. 777. Was there any change made in these pipes while you were working for Mr. Meinhard?

A. No, sir.

X Q. 778. Were these pipes fastened to the wall anywhere, or did they remain there without fastening?

A. They remained without being fastened.

X Q. 779. Where did Mr. Meinhard keep his soda water and ginger pop and ginger ale and such like?

377 A. It was kept in the cellar.

X Q. 780. Any of it kept upstairs?

A. What we used for the daily business.

X Q. 781. Where was that kept?

A. That was outside, in the outer part of the cellar, outside of the wine cellar and outside of the lower ice box.

X Q. 782. Was it kept in boxes?

A. Yes, sir.

X Q. 783. So when a persen went down cellar for a bottle of pop or ginger ale they wouldn't have to go into the wine cellar?

A. No, sir.

X Q. 784. Didn't they keep any of that stuff upstairs?

A. It was kept as much as needed.

X Q. 785. Whereabouts upstairs did you keep it?

A. Right next to the upper ice box in the bar-room; there was a space between the sideboard and the upper ice box.

X Q. 786. You didn't keep it in the upper ice box, then?

A. No, sir; kept it right in the box that it was delivered in.

X Q. 787. You kept the pop and ginger ale in the box in which it was delivered?

A. Yes, sir.

X Q. 788. Did you keep ice in this upper ice box?

A. Yes, sir.

378 X Q. 789. And didn't you occasionally put a bottle of pop or ginger ale in the upper ice box to keep it cool?

A. I never remembered that I put it in.

X Q. 790. Didn't they have another large ice box in the saloon in which they kept ginger ale or pop?

A. There was another large ice box and they kept mostly eatables in there—ham and cheese and so on.

X Q. 791. You didn't keep pop in there?

A. I don't remember that we ever put any in there.

X Q. 792. Whereabouts in the saloon was the upper ice box located?

A. It was near the southwest corner, on the south side of the bar-room.

X Q. 793. And right against the partition, was it?

A. Yes, sir; and right against the partition.

X Q. 794. Which way did the bar stand in this saloon, east and west or north and south?

A. East and west.

X Q. 795. Did it run the whole length of the building?
A. No, sir.
X Q. 796. It started from the west end and ran east, did it?
A. It started from a little above the upper ice box and ran east.
X Q. 797. But not to the east wall?
A. No, sir; not to the entire east.
379 X Q. 798. Did it run to the west wall?
A. It run to the south wall.
X Q. 799. That is, the bar ran to the south wall?
A. The east end was connected with the south wall.
X Q. 800. There was an L at the east end of the bar, was there?
A. There was a turn or extension.
X Q. 801. And that turn went to the south wall?
A. Yes, sir.
X Q. 802. What was the distance between the bar and the south wall?
A. About four feet.
X Q. 803. You say this upper ice box rested against the west wall of the building?
A. The south wall.
X Q. 804. The south and also the west?
A. No, sir.
X Q. 805. How near to the west wall was the ice box?
A. It was several feet; there was the water-closet right there by the bar.
X Q. 806. About how far was it?
A. About four or five feet from that.
X Q. 807. Did the saloon have a cellar under it?
A. There was a cellar under the saloon; yes, sir.
380 X Q. 808. And it was in that cellar where the large ice box was located, was it?
A. The cellar was divided; one part was kept for coal and the other part for a wine cellar and a beer cellar.
X Q. 809. Was this large ice box in a part of the cellar?
A. There was, and about under the bar-room.
X Q. 810. And that was where the large ice box and the wine-room was kept?
A. Yes, sir.
X Q. 811. Was the wine-room east of the ice box?
A. That was east of the ice box.
X Q. 812. And connected with it, was it?
A. There was a partition clear around the wine cellar.
X Q. 813. Did the wine cellar run to the east wall?
A. No, sir; it slanted off before it reached the east wall.
X Q. 814. And which way did it run?
A. It run to the south wall, the end of the partition of the wine cellar.
X Q. 815. How near the east wall did it run?
A. It was fastened to the south wall.
X Q. 816. How near the east wall did it run?
A. It was about two feet apart.

X Q. 817. What was the length of this wine cellar east and west?

A. About ten or twelve feet.

381 X Q. 818. How near the west wall was this large ice box in the cellar?

A. It was in the southwest corner.

X Q. 819. Right against the south wall?

A. Right against the south and west wall.

X Q. 820. Was the bar upstairs directly above it?

A. Not exactly.

X Q. 821. It was a little north of it, was it?

A. Of course, north of that part.

X Q. 822. In other words, the large ice box was south of the bar?

A. Southwest of the bar.

X Q. 823. In the beer-supply pipes running from the upper to the lower ice box would they run between the joists of the saloon floor?

A. No, sir; they run a little below the joists of the floor above?

X Q. 824. How far below?

A. It might have been two inches or so.

X Q. 825. What was the depth of these joists?

A. I never measured them. I don't know whether 2 x 6 or 4 x 6.

X Q. 826. Six inches deep, do you mean?

A. Yes, sir.

X Q. 827. Did this bar in the saloon have an L in the west end of it?

A. No, sir.

X Q. 828. It was a straight bar, then, to the west wall, was it?

382 A. It was open on the west end.

X Q. 829. And had it no turn at the west end?

A. It had none whatever.

X Q. 830. It did have one at the east end?

A. Yes, sir; there was one on the east end.

X Q. 831. Was this upper ice box located above the lower ice box?

A. No, sir.

X Q. 832. Was it east or west or north or south of it?

A. It was north from the lower ice box.

X Q. 833. How far north of it, should you say?

A. Several feet.

X Q. 834. That is, the lower ice box was south of it?

A. Yes, sir; the southwest corner.

X Q. 835. And was it on a line with the lower ice box?

A. No, sir.

X Q. 836. Was it east or west of it?

A. It was north.

X Q. 837. Was it east or west of it, or on a direct line with it?

A. I was north of the lower ice box, on the floor above.

X Q. 838. I asked if it was in a direct line with the lower ice box, or was it east or west or west of it.

A. It was more to the east.

383 X Q. 839. How much should you say?

A. I couldn't say; I never measured that.

X Q. 840. Was it a foot or six inches?

A. I never measured that, and never paid any attention to it.

X Q. 841. Do you recollect when Mr. Meinhard moved from Falls Field to Germania hall?

A. No, sir.

X Q. 842. You were not working for him at the time?

A. No, sir.

X Q. 843. Did you help him move?

A. No, sir.

X Q. 844. How often have you seen this model, "Complainant's Exhibit, Meinhard Apparatus"?

A. I saw it once up in Mr. Cronise's office.

X Q. 845. And the next time you saw it was in Mr. Selden's office?

A. Right here, this afternoon.

X Q. 846. Did you ever see it at Mr. Magin's?

A. No, sir.

X Q. 847. Who showed it to you in Mr. Cronise's office?

A. Mr. Cronise asked me whether that was a correct model, and I gave my affidavit over it.

X Q. 848. Did he tell you who made it?

A. I was requested if I couldn't make a model, and so I made one. I made a rough model, but that is improved and better workmanship. I made only a rough model to give a rough idea of the model.

384 X Q. 849. Who did you make it for?

A. I made it to show what I know about Meinhard's apparatus.

X Q. 850. Who asked you to make it?

A. Mr. Magin asked me whether I could make one.

X Q. 851. And you went on and made one?

A. Yes, sir.

X Q. 852. And after you made it, what did you do with it?

A. I gave it to Mr. Magin.

X Q. 853. Where is that model now?

A. I don't know.

X Q. 854. Where did you last see it?

A. I never saw it afterwards.

X Q. 855. Do you know what Mr. Magin did with it?

A. No, sir.

X Q. 856. How long did it take you to make it?

A. I don't know. I didn't pay any attention to how long it did take me.

X Q. 857. Did he pay you for making it?

A. No, sir.

X Q. 858. Who assisted you in making it?

A. I made it all alone.

X Q. 859. Didn't you have any assistance?

A. No, sir.

X Q. 860. Who told you that this model was made after yours?

385 A. I was told that it was improved in workmanship, and I could see it wasn't my make. I had a rough model to give an idea how it was, and they put it up in better style.

X Q. 861. Do you know who made this model?

A. No, sir.

X Q. 862. Did you show this model to any person but to Mr. Magin after you made it?

A. No, sir.

X Q. 863. Did you take it to his saloon?

A. I brought it to his house; yes, sir.

X Q. 864. Was Mr. Gordon there?

A. No, sir.

X Q. 865. Did your model have this piece to it—the upper ice box?

A. Yes, sir.

X Q. 866. Built in the same way as that?

A. Yes, sir.

X Q. 867. Same size?

A. I don't know exactly whether the same size or not.

We will mark this "A A."

Complainant's counsel asked if the part marked A A is the part last referred to by counsel and to which he calls the witness' attention.

Defendants' counsel states that it was.

X Q. 868. Did your model have that piece on it?

A. Yes, sir.

386 X Q. 869. Located just where that is?

A. Yes, sir.

X Q. 870. Did your model have a pair of steps like these?

A. I had a pair of steps in my model.

X Q. 871. What was the size of your model?

A. I don't know exactly; I didn't measure what size it was. I made a common, rough model to give the idea.

X Q. 872. What size was it?

A. I don't know; about the same as this. I don't know exactly, for I never measured it.

X Q. 873. Did your model have beer-supply pipes on it?

A. Yes, sir.

X Q. 874. And also beer kegs?

A. No, sir.

X Q. 875. It didn't show the beer kegs in the lower ice box?

A. No, sir.

X Q. 876. Did your model show a division wall in the lower ice box such as shown on here?

A. Yes, sir.

X Q. 877. The same size?

A. Yes, sir.

X Q. 878. Did your model also show the joists to the cellar?

A. Yes, sir.

X Q. 879. Did it also show the hallway as shown in this model?

387 A. Yes, sir.

X Q. 880. And did it also show the partition on the north side of the hallway?

A. Yes, sir.

X Q. 881. And did it also show the wine cellar?

A. Yes, sir.

X Q. 882. And the same size?

A. Yes, sir.

X Q. 883. Also show the lower ice box?

A. Yes, sir.

X Q. 884. And also show the hole in it?

A. Yes, sir.

X Q. 885. How long did it take you to make your model?

A. I don't know. I didn't pay no attention to how long it did take me.

X Q. 886. About how long?

A. About a day or so; a day or two.

X Q. 887. Anybody assist you?

A. No, sir.

X Q. 888. What did you have to represent the supply pipes?

A. I had some wire.

X Q. 889. Did your model also show the coolers in the upper ice box?

A. Yes, sir.

X Q. 890. And also the faucets in the upper ice box?

A. Yes, sir.

388 X Q. 891. And the air pump?

A. No air pump needed; only showed the cooling apparatus.

X Q. 892. Your model, then, didn't have an air pump to it?

A. No, sir.

X Q. 893. Did your model show a door in the wine cellar?

A. Yes, sir.

X Q. 894. Was it hung on hinges?

A. Yes, sir.

X Q. 895. Did your model also show a little bracket representing a gas jet?

A. Yes, sir.

X Q. 896. Did your model show how many faucets?

A. Yes, sir.

X Q. 897. How many faucets?

A. Three.

X Q. 898. It didn't show four?

A. No, sir.

X Q. 899. Did those faucets have keys to them?

A. Only showed or represented that it should be a faucet.

X Q. 900. With a key?

A. Yes, sir; with a key.

X Q. 901. Something similar to those shown on defendants' exhibit?

A. I didn't have them quite as fancy as that.

389 X Q. 902. Of what material were they?

A. Made out of wire.

X Q. 903. The faucets were made out of wire, and what were the keys made of?

A. Of the same material.

X Q. 904. And were they fastened on the inside to the wire representing the beer-supply pipes?

A. To the coil.

X Q. 905. How many turns of the wire was the coil made of?

A. There was two or three laps to a coil.

X Q. 906. And did each coil have the same number of laps?

A. Pretty near the same number.

X Q. 907. And there were three of those, were there?

A. There were three coils.

X Q. 908. One for each supply pipe?

A. Yes, sir.

X Q. 909. And did one rest on top of the other in you- model?

A. They laid right in the upper ice box.

X Q. 910. Whereabouts did you get the wire which you used for that purpose?

A. I always had a little stuff lying around at home.

X Q. 911. Did your model show an air reservoir in the lower ice box?

A. Yes, sir.

390 X Q. 912. What was the size of that air reservoir?

A. That is about from 4 to 5 feet long.

X Q. 913. What was the size of this air reservoir in your model?

A. I don't know. I gave the representation that it was there.

X Q. 914. What was the size of it?

A. I don't know.

X Q. 915. Give the size as near as you can.

A. It might have been two inches and it might have been three or four inches. I don't know. I only gave an idea that it was there.

X Q. 916. What was it made of?

A. A piece of wood.

X Q. 917. Did you have an attachment showing where the air pipe was fastened to it?

A. Yes, sir.

X Q. 918. And did you show the air pipe fastened to it?

A. Yes, sir.

X Q. 919. And then they ran from the air reservoir to the kegs?

A. Yes, sir.

X Q. 920. And all this was shown in your model, was it?

A. Yes, sir.

X Q. 921. Do you think this model "Complainant's Exhibit Meinhard Apparatus" corresponds with the model which you made?

391 A. This here model corresponds with the one I made.

X Q. 922. Doesn't differ in any particular, does it?

A. No, sir.

X Q. 923. Does this model show everything that your model showed?

—. ——.

X Q. 924. And did your model show everything that this does?

A. Yes, sir.

X Q. 925. What did Mr. Magin do with that model?

A. I don't know.

X Q. 926. Have you seen it since you gave it to him?

A. No, sir.

X Q. 927. Did he tell you why he didn't use that model?

A. He didn't say anything to me about it.

X Q. 928. Do you know if he showed it to any person?

A. Not that I know of.

X Q. 929. Did you show it to any person but Mr. Magin?

A. No, sir.

X Q. 930. Did your model show the upper ice box to be lined?

A. I made a common upper ice box to represent that it was there.

X Q. 931. Did your model show the upper ice box in the Meinhard apparatus to be lined?

392 A. No; never showed anything like that.

X Q. 932. Was it in fact lined?

A. The model I made?

X Q. 933. Was the apparatus itself lined?

A. Meinhard's apparatus?

X Q. 934. The Meinhard apparatus.

A. That was lined inside.

X Q. 935. But your model didn't show it lined?

A. No.

X Q. 936. Does this model here show it lined?

A. It was made after mine. I don't know. I didn't look at that particularly.

X Q. 937. On your way to and from your place of business do you pass Mr. Magin's place of business?

A. One in awhile.

X Q. 938. His saloon is quite near where you are working, is it not?

A. It is quite a little ways.

X Q. 939. Do you pass by as often as once a day?

A. About once a day.

X Q. 940. To and from your meals you pass by, don't you?

A. No, sir; evenings when I go home.

X Q. 941. And you drop in there occasionally to have a glass of beer?

A. Yes, sir; drop in there occasionally to have a glass of beer.

X Q. 942. Is Mr. Magin generally at home?

393 A. Sometimes he is out on business.

X Q. 943. Did he tell you why he didn't bring that model here?

A. He never said anything to me about the model.

X Q. 944. What reason did he give for having another one made?

A. I don't know.

X Q. 945. When you showed him your model did he tell you he would have another one made?

A. He never said anything to me.

X Q. 946. When did you first hear that he had a new model made?

A. I seen the model before in Mr. Cronise's office.

X Q. 947. That was the first notice that you had that he was having a new model made, was it?

A. Yes, sir.

X Q. 948. You had nothing to do about the making of this new model?

A. No, sir; I made a rough model and this was made after the model I made.

X Q. 949. When you were in Mr. Cronise's office did you ask Mr. Magin why he didn't use your model?

A. No, sir; I didn't ask him nothing.

X Q. 950. You have, then, a good deal of interest in this case, haven't you?

A. No, sir.

X Q. 951. Did Mr. Magin tell you he would pay you for your time?

394 A. Pay me for what I lose in the shop.

X Q. 952. He also paid you for your lost time while you were in Chicago, didn't he?

A. Yes, sir.

X Q. 953. How much did he pay you?

A. He paid me my day's wages.

X Q. 954. How much was that?

A. Two dollars pay; what I got at the shop.

X Q. 955. Was that the agreement with him?

A. I made no agreement with him whatever.

X Q. 956. What did he tell you about paying you?

A. He was willing to pay my expenses and my days.

X Q. 957. And pay your spending money also?

A. No, sir.

X Q. 958. You have to pay that yourself?

A. Yes, sir.

X Q. 959. How often were you at Mr. Cronise's office?

A. I was there, I believe, three times.

X Q. 960. And on each occasion did Mr. Magin meet you there?

A. No, sir; not always.

X Q. 961. How many times did he meet you there?

A. I don't recollect whether it was once or twice.

X Q. 962. Did he ever accompany you to Mr. Selden's office?

395 A. No, sir.

X Q. 963. Did you ever come with Mr. Gordon to Mr. Selden's office?

A. No, sir.

Redirect examination by Mr. BENNETT, counsel for the complainant:

Re-D. Q. 964. You say you went to Mr. Cronise's office on three different occasions?

A. Yes, sir.

Re-D. Q. 965. Did you on each of those three occasions make an affidavit?

A. Yes, sir.

Re-D. Q. 966. How long have you been porter at Wile, Brickner & Wile's?

A. About five or six years.

Re-D. Q. 967. You are still employed there as porter?

A. Yes, sir.

Re-D. Q. 968. You say Mr. Magin came down there to see you?

A. Yes, sir.

Re-D. Q. 969. Was that shortly before giving your first affidavit?

A. That was shortly before I gave my first affidavit.

Re-D. Q. 970. What did Mr. Magin say to you when he came to see you where you were at work?

A. Mr. Magin came and asked whether my name was Otto Schantz, and I said, "Yes;" and he asked whether I worked for John Meinhard, and I told him, "Yes;" and further asked
396 whether I knowed what kind of cooling apparatus John Meinhard had, and I told him I did; and he asked me whether I couldn't describe it to him, and I told him I could, and after I told him he asked me whether I wouldn't swear to it, and he asked me to come to Mr. Cronise's office and give my affidavit, and so I did.

Re-D. Q. 971. Did Mr. Magin know you before he came down there that day and asked you whether you were Otto Schantz?

A. No, sir.

Re-D. Q. 972. Did Mr. Magin go to your employers and get permission for you to go up and make an affidavit?

A. Yes, sir.

Re-D. Q. 973. What took place when you got up to Mr. Cronise's office?

A. Mr. Cronise asked me—he put the questions to me and I answered them—about this cooling apparatus.

X Q. 974. And as you answered them did he take them down?

A. Yes, sir; he took them down on a piece of paper.

Re-D. Q. 975. Did you have any conversation with any one about this apparatus at Mr. Cronise'- office other than Mr. Cronise?

A. No, sir.

Re-D. Q. 976. After Cronise had asked you the questions and taken down your answers, what then occurred?

A. I had to swear to it that it was so.

397 Re-D. Q. 977. Did he read it all over to you before you signed and swore to it?

A. Yes, sir.

Re-D. Q. 978. Can you state from recollection about when it was you made this first affidavit?

A. I made that two years ago—in October, I believe it was.

Re-D. Q. 979. That would be October of what year?

A. 1885.

Re-D. Q. 980. When Mr. Magin came to Wile, Brickner & Wile's to ask you if you were Schantz and if you recollected the beer cooling and drawing apparatus that Meinhard had in use did Mr. Magin explain the apparatus to you?

A. No, sir.

Re-D. Q. 981. Simply asked you what you knew about it?

A. Yes, sir.

Re-D. Q. 982. Did he or any one else tell you at that time or has any one since told you what Mr. Meinhard and others have testified to in reference to Meinhard's beer cooling and drawing apparatus?

A. No, sir.

Re-D. Q. 983. Did Mr. Magin ask you if you could give him the names of any other parties who worked for Meinhard and would be likely to know of his beer cooling and drawing apparatus?

A. Yes, sir; he did.

Re-D. Q. 984. And did he or not request you to look those parties up and bring them to him?

A. He asked me if I know any to let him know.

398 Re-D. Q. 985. State fully what you did about looking up parties and letting Mr. Magin know of them.

A. I went to several other parties and asked them whether they could remember anything about the cooling apparatus kept in Falls Field, and they would all answer that they did, and I asked them if they would go down to Mr. Magin; that he would like to see them.

Re-D. Q. 986. Did you give any of those parties your recollection of Meinhard's apparatus?

A. No, sir.

Re-D. Q. 987. Did you have any conversation whatever with them about Meinhard's apparatus other than to ask them if they remembered it?

A. No, sir.

Re-D. Q. 988. Was there any reason why you didn't talk with these different parties about Meinhard's apparatus?

A. No, sir; there was no reason.

Re-D. Q. 989. What instruction, if any, did Mr. Magin give you at the time he asked you if you would look those parties up and bring them to him?

A. He gave me no instructions whatever, and only asked me if I knew of any parties, and that I should let him know.

Re-D. Q. 990. Did Mr. Magin arrange with your employers so you could look up these parties?

A. Yes, sir; he did.

Re-D. Q. 991. And it was in that way that you were permitted to leave your work a sufficient length of time to look them up?

399 A. Yes, sir.

Re-D. Q. 992. As you came across the different parties whose names have been mentioned, did you arrange for them to go to Mr. Magin's?

A. I told them Mr. Magin would like to see them.

Re-D. Q. 993. Did you ever have any talk with any of these parties at Mr. Magin's saloon about the construction of Meinhard's apparatus?

A. No, sir.

Re-D. Q. 994. Did you ever hear Mr. Magin describe what he understood to be Meinhard's apparatus to any of these parties?

A. No, sir.

Re-D. Q. 995. Did you ever hear Mr. Magin tell any of these parties what Meinhard and others had testified to about this apparatus?

A. No, sir.

Re-D. Q. 996. On the second and third occasions when you went to Mr. Cronise's office, and before signing your second and third affidavits, did you answer such questions as Mr. Cronise put to you?

A. Yes, sir.

Re-D. Q. 997. Did you ever talk with Mr. Magin or Mr. Gordon, or any one other than Mr. Cronise, while at Mr. Cronise's office?

A. No, sir.

Re-D. Q. 998. Do you remember Mr. Magin telling that he didn't know any of these parties, and he would have to get some one like you, who was acquainted with them, to look them up?

A. No, sir; all I know is he asked me.

400 Re-D. Q. 999. He asked you to look them up?

A. Yes, sir.

Re-D. Q. 1000. And did he ask you to go to Chicago and look up Hahn for him?

A. Yes, sir.

Re-D. Q. 1001. Before going to Chicago did Mr. Magin get permission of your employers to permit you to go?

A. Yes, sir.

Re-D. Q. 1002. And he paid your travelling expenses and loss of time for going?

A. Yes, sir.

Re-D. Q. 1003. Before Hahn gave his affidavit did you describe to him your recollection of Meinhard's apparatus?

A. No, sir.

Re-D. Q. 1004. Did you tell him what his affidavit was wanted for?

A. I told him that he should give an affidavit—what he knows about the Meinhard apparatus.

Re-D. Q. 1005. Did he say he would?

A. He said he would.

Re-D. Q. 1006. And you then took him to the notary's office?

A. Yes, sir.

Re-D. Q. 1007. While at the notary's office, was Mr. Hahn's statement as he gave it to the notary taken down?

A. Yes, sir.

Re-D. Q. 1008. Did Otto Hahn work at Meinhard's while you worked there?

401 A. Yes, sir.

Re-D. Q. 1009. Did he ever assist you in the saloon bar?

A. He assisted me as well as in the bar down below, in the cellar.

Re-D. Q. 1010. He assisted you in the saloon bar and also in the cellar, did he?

A. Yes, sir.

Re-D. Q. 1011. Did he ever assist you in bringing up ice and filling the upper ice box?

A. Yes, sir.

Re-D. Q. 1012. And tapping the beer kegs and making the connection with the beer-supply pipes in the cellar?

A. Yes, sir.

Re-D. Q. 1013. Did he sometimes tend bar for you in the upper saloon?

A. Yes, sir.

Re-D. Q. 1014. Did you ever see Hahn dip the water out of the upper ice box?

A. Yes, sir.

Re-D. Q. 1015. All of those things he did when an assistant to you?

A. Yes, sir; as assistant to me whenever he was needed.

Re-D. Q. 1016. And did Hahn also work out in the hall bar?

A. Yes, sir; he helped in the hall on Sundays as waiter.

Re-D. Q. 1017. Have you any interest whatsoever in this case?

402 A. No, sir.

Re-D. Q. 1018. Am I correct in understanding you have to testified that you took Felix Guenther's place as bartender at Meinhard's?

A. Yes, sir.

Re-D. Q. 1019. Before being employed as bartender in the fall of 1879 had you worked there on Sundays?

A. Yes, sir; I worked there as waiter on Sundays in the concert hall.

Re-D. Q. 1020. And after how long a time had you worked there on Sundays as waiter in the concert hall before the fall of 1879?

A. It might have been from a year and a half to two years.

Re-D. Q. 1021. And then from the fall of 1879 to the spring of 1881 you were employed continuously?

A. As regular bartender.

Re-D. Q. 1022. You stated, I believe, in reply to one of Mr. Sullivan's questions that you knew Albert Stief and had spoken to him about Meinhard's apparatus. When was it you spoke to Albert Stief about Meinhard's apparatus?

A. It was about two years ago that I spoke to Albert Stief about it.

Re-D. Q. 1023. State fully how you came to speak to Albert Stief at that time about Meinhard's apparatus, and what was said.

A. I met Albert Stief in the saloon where he worked and had a glass of beer, and I asked him whether he could collect anything

about Meinhard's apparatus or could remember anything
403 about Falls Field—how it looked there—and he said he could, and I asked him then whether he wouldn't come down to Mr. Magin's place and he said he would, and he never showed up there. I went down to his house and asked him why he didn't come and he said he had no time, and I asked him again whether he could remember anything about it, and he says, "Well, I don't know whether I remember anything more or not."

Re-D. Q. 1024. And after that did you see him again?

A. Then I asked him once more and he told me he had a talk with Mr. Meinhard. That is all I know about him.

Re-D. Q. 1025. He had had a lalk with Mr. Meinhard and then wouldn't come?

A. He wouldn't come. I expected him to come. It was in the afternoon and he never showed up, and he told me afterwards he had a talk with Mr. Meinhard and that was the reason he didn't show up any more.

Re-D. Q. 1026. Was that in October, 1885, about the time you gave your first affidavit and was looking up these other parties?

A. It was about the same time.

Re-D. Q. 1027. Where was it that you met George J. Englert?

A. I met George Englert on the corner of Baden and St. Joseph street-.

Re-D. Q. 1028. Who, if any one, was with him when you met him?

A. His wife happened to be along.

Re-D. Q. 1029. What time of the day was it that you met him, if you remember?

404 A. It was in the evening.

Re-D. Q. 1030. And was it then that you asked him to go to Mr. Magin's with you?

A. No, sir. I asked him whether he remembered anything about the Falls Field apparatus and he said he did, and I asked him whether he wouldn't go to Mr. Magin's place, and he promised he would be there and would go and see Mr. Magin. That was all I had with him.

Re-D. Q. 1031. And afterwards did he go to see Mr. Magin?

A. He went to Mr. Magin's place.

Re-D. Q. 1032. Before October, 1885, when Mr. Magin came to see you at Wile, Brickner & Wile's, had he or any one else had any talk with you about this Meinhard apparatus since you left Meinhard's in the spring of 1881?

A. No, sir.

Re-D. Q. 1033. You have testified that you wrote a letter to Otto Hahn, at Chicago, requesting him to come on here. When was that?

A. About two weeks ago.

Re-D. Q. 1034. And at whose request did you write that letter?

A. At Mr. Magin's request.

Re-D. Q. 1035. What did you say to Mr. Hahn in that letter?

Defendants' counsel objected as incompetent.

A. I told Mr. Hahn that he was wanted here to testify what he know about this cooling apparatus.

405 Re-D. Q. 1035. And did you tell him that his time and expenses would be paid for, as had been arranged?

A. Yes, sir.

Defendants' counsel objected as incompetent and also as leading.

Re-D. Q. 1036. You have testified that Mr. Magin came to your place of business this morning; what for?

A. Mr. Magin told me I was wanted to testify in this beer-cooling-apparatus matter.

Re-D. Q. 1037. And did he then arrange with your employers to let you off for the day?

A. Yes, sir.

Re-D. Q. 1038. And you then came with him to the Powers house to see me, did you?

A. Yes, sir.

Re-D. Q. 1039. You have testified that I this morning called your attention to the rubber hose surrounding the beer-supply pipe in the model "Defendants' Exhibit Meinhard Apparatus Model." What did I state to you at that time?

A. You asked me whether there was any rubber hose.

Re-D. Q. 1040. And what did you say?

A. I said no.

Re-D. Q. 1041. And that is all I asked you or said to you about that model?

A. Yes, sir.

Re-D. Q. 1042. You have testified that the bar did not extend to the west wall of the saloon?

406 A. Yes, sir.

Re-D. Q. 1043. What was in the southwest corner of the saloon?

A. There was a water-closet?

Re-D. Q. 1044. And what came next to that water-closet?

A. An old ice box.

Re-D. Q. 1045. And then an open space?

A. Yes, sir.

Re-D. Q. 1046. And then the bar?

A. Yes, sir.

Re-D. Q. 1047. Was that open space the passage-way behind the bar?

A. That was the main entrance.

Re-D. Q. 1048. Was it a part of your duties while you were bartender for Meinhard to clean out the beer-supply pipes?

A. Yes, sir.

Re-D. Q. 1049. How often would you do that?

A. About once a week.

Re-D. Q. 1050. Explain how you cleaned the beer-supply pipes.

Defendants' counsel objected upon the ground that it is not

proper redirect examination, and the counsel is requested to confine his direct examination to such matters as were referred to in the cross-examination and none other.

A. We used to get some hot water up in a wash boiler and put soda in it, and after the water was hot enough would fill it
407 into the end of a beer keg and put that in the cellar and tap it as we would a regular beer keg and force it through the pipes the same as we would force the beer up, and by cooling them off the pipes would run the water through from above, through the faucets.

Re-D. Q. 1051. Then the soda water you would put in a keg and tap the same as beer in the lower ice box and force the water up through the pipes?

A. Yes, sir; the same as beer.

Re-D. Q. 1052. Letting it run out of the faucets in the saloon?

A. Yes, sir.

Re-D. Q. 1053. And after that was done you would force clean water into and through the pipes?

A. Yes, sir; through the faucets and through the beer-supply pipes?

Re-D. Q. 1054. And that was a weekly duty, was it?

A. Yes, sir.

Re-D. Q. 1055. Does this model, "Complainant's Exhibit Model Meinhard Apparatus," correctly show the relative positions of the upper and lower ice box?

A. Yes, sir.

Re-D. Q. 1056. As appears from this model, the wine cellar and the lower ice box were in that part of the cellar that was underneath the hall back of the bar?

A. Yes, sir.

Re-D. Q. 1057. Was it that way at Meinhard's?

408 A. Yes, sir; it was that way at Meinhard's establishment?

Re-D. Q. 1058. Then the wine cellar and lower ice box were in that part of the cellar underneath the hall back of the bar?

A. Yes, sir.

Re-D. Q. 1059. You think the joists supporting the saloon floor were about six inches in depth, do you?

A. About six inches; 2 x 6.

Re-D. Q. 1060. And the beer-supply pipes came through the floor and extended down several inches below the joists?

A. Yes, sir.

Re-D. Q. 1061. And then slanted off and went into the wine cellar?

A. Yes, sir.

Re-D. Q. 1062. And from the wine cellar into a hole in the east side of the lower ice box?

A. Yes, sir.

Re-D. Q. 1063. About how far was it from the hole in the floor where the beer-supply pipes came through to the hole in the lower ice box where the beer-supply pipes entered?

A. From about eight to ten feet.

Re-D. Q. 1064. What length of pipe would you say was exposed in the cellar and before the pipe entered the wine cellar?

A. About five or six feet.

Re-D. Q. 1065. And then it went into the wine cellar and into this hole in the east end of the lower ice box?

409 A. Yes, sir.

Re-D. Q. 1066. Did you ever notice any dripping of water around these beer-supply pipes?

A. No, sir.

Re-D. Q. 1067. Were they always dry?

A. Yes, sir; always dry.

Re-D. Q. 1068. And always bare?

A. Yes, sir; always bare.

Re-D. Q. 1069. Did you make this rough model which you have spoken of at Mr. Magin's request?

A. Yes, sir; he asked me whether I couldn't make a model.

Re-D. Q. 1070. Other than being more finished in workmanship, is there any substantial difference between this model, "Complainant's Exhibit Model Meinhard Apparatus," and the rough model which you made for Mr. Magin?

A. No, sir; excepting the workmanship and the finish.

Re-D. Q. 1071. After having closely examined this model, "Complainant's Exhibit Model Meinhard Apparatus," do you or not find it to be a correct duplicate of the rough model which you made for Mr. Magin?

A. Yes, sir.

Re-D. Q. 1072. It is a correct duplicate, is it?

A. Yes, sir; it is a correct duplicate.

Re-D. Q. 1073. Did you understand when you were making that model that it was only to be a rough model as a pattern for Mr. Magin?

A. Yes, sir.

410 Re-D. Q. 1074. When you were shown this model, "Complainant's Exhibit Model Meinhard Apparatus," at Mr. Cronise's office, did you then identify it as being a correct model?

A. Yes, sir.

Re-D. Q. 1075. Having stated that you made three affidavits for Mr. Magin at Mr. Cronise's office, read the three documents which I now show you and state whether or not you recognize them as being copies of your said three affidavits.

A. Yes, sir.

Re-D. Q. 1076. Have you read or had read to you either of the originals or copies of those, your said three affidavits, since making them in Mr. Cronise's office?

A. No, sir.

Re-D. Q. 1077. The first that you saw of them was a few moments ago when I showed them to you and requested you to read them for identification?

A. Yes, sir.

Complainant's counsel offered in evidence copies of the witness' three affidavits identified by him and marked Complainant's Exhibits Schantz's Affidavits Nos. 1, 2, and 3.

Defendants' counsel objected as incompetent, but not upon the ground that they are copies.

(Signed) OTTO SCHANTZ.

411 ADELBERT CRONISE, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Adelbert Cronise; age, thirty-five; counselor-at-law; Rochester, N. Y.

Q. 2. Do you know Mr. Michael Magin, the complainant in these cases?

A. I do.

Q. 3. Did you act as attorney for Mr. Magin in the preparation of certain affidavits to be used by him on an application to reopen the cases of Magin against McKay and against Welker?

A. I did.

Q. 4. State fully the way in which those affidavits were taken.

A. The several deponents came to my office from time to time; I think each one by himself; Otto Schantz was the first and Koehler was the second and Stief was the third. Each one came in and I went over the ground, asking him what he knew about the matter in hand and reduced his statement to writing. After it was finished I read to each one the affidavit as I had prepared it from his statement, and it was in the first place signed by each one and sworn to before me. Schantz's affidavit was verified in August; Koehler's in September; Stief's in October. Then when I prepared the papers which were to be presented to the court I made exact copies of these three affidavits which they had made before me prior to that, and they again came to my office and I read the affidavits to them and went with them before different notaries and they were sworn
412 to. Those were the three that were used upon the first application to Judge Blatchford, and after that other affidavits of Weiland and George J. Englert and John V. Englert, and perhaps others that I do not recall the names, were prepared in a similar way and copies made from them.

Q. 5. What you term the first affidavits were those which were used in obtaining the order to show cause?

A. Yes, sir; the first three.

Q. 6. And subsequently to the issuance of the order to show cause by Judge Blatchford the additional ones were taken to use on the argument?

A. Yes, sir.

Q. 7. In the case of each and every of these affiants whose names you have mentioned did you question them and take down the answers they gave which compose their affidavits?

A. I did. I did not take down question and answer; I took what they said in narrative form.

Q. 8. And did each of the affidavits as reduced to writing correctly set forth the answers which each of the respective affiants gave as their recollection of the construction and operation of the Meinhard beer cooling and drawing apparatus?

A. They did, as correctly as I could state them in writing.

Q. 9. And were all of those affidavits prepared in the presence of the affiants?

A. They were.

Q. 10. Examine the model marked "Complainant's Ex-
413 hibit Model Meinhard Apparatus," and state whether you have seen it before; and, if so, when first.

A. It is the model which was brought to my office in the fall of 1885, while I was preparing the papers for the application for a rehearing.

Q. 11. And was this model identified by the respective deponents whose affidavits you took?

A. It was by each of them.

Q. 12. At and during the time of taking their respective affidavits did any of the deponents in your presence have any conversation with any other party or parties?

A. Not that I remember; I am quite sure they did not.

Q. 13. So far as concerns the statements contained in the respective affidavits which you prepared, are they the statements which the respective deponents made to you of their recollection of the construction and operation of Meinhard's apparatus?

A. They are.

Q. 14. Was any means whatsoever used to refresh the recollections of the several deponents at the time they answered your questions which you embodied in the form of an affidavit or did you permit each one to give his recollection and reduce it in that form to writing?

A. I permitted each one to state the case entirely from his recollection. I don't remember if each of the witnesses refreshed his recollection by reference to any memorandum or not.

Cross-examination by Mr. SULLIVAN, counsel for the defendants:

414 X Q. 15. Did you prepare the petition sent by Mr. Magin in the application before his honor Justice Blatchford for a rehearing of that case?

A. I did.

X Q. 16. And you also prepared all the affidavits that were used on that motion except the one of Mr. Selden, did you not, or did you also prepare that one?

A. I don't remember particularly as to that one. I think Mr. Selden prepared that himself. I prepared all the others except the one that was taken in Chicago. That I had nothing to do with.

X Q. 17. Did you assist Mr. Magin in securing the affidavit of Mr. Hahn in Chicago?

A. My recollection is that I did nothing at all in reference to that affidavit.

X Q. 18. Did you not advise Mr. Magin to send Mr. Schantz out there to see Mr. Hahn?

A. I may have told him to do that; I think it is probable I did.

X Q. 19. You had known that Mr. Schantz was assisting Mr. Magin in looking up the witnesses at that time?

A. No, sir; I think not. I don't think I knew he was going to send until after he sent him. I think after being told what this man out there, Hahn, knew about it, I think I probably advised him to send out and get his affidavit, but I don't think I advised sending any particular person, and I don't think I knew at the time what particular person was to go and get it.

X Q. 20. Yet you knew Mr. Schantz at this time?

415 A. Only as I saw him when he came to the office and made his affidavit. I think that was all that I had ever seen of him.

X Q. 21. Did he come there alone?

A. I am not sure if he came alone or whether some one else came with him.

X Q. 22. Do you recollect Mr. Magin or Mr. Gordon being there with him on the occasion when he made this affidavit?

A. I don't recollect it.

X Q. 23. You learned from Mr. Magin, did you, what Mr. Hahn could testify to?

A. I think Mr. Magin told me Mr. Hahn was familiar with the apparatus.

X Q. 24. Didn't you learn that fact from Mr. Schantz?

A. I think not.

X Q. 25. You had some correspondence with Mr. Hahn before Mr. Schantz went out there, didn't you?

A. I don't remember, but I think not. I don't remember writing to him and I don't think I received anything from him.

X Q. 26. Didn't Mr. Schantz give you the names of the several parties who afterwards came to your office and made these affidavits?

A. I don't remember that he did. I think it was Mr. Magin who told me about them—mentioned the different ones who had seen the apparatus at that time and knew about it. I don't remember that Mr. Schantz mentioned the others.

416 X Q. 27. Don't you recollect giving Mr. Schantz a card containing the name of an attorney in Chicago whom he was to call upon when he was there?

A. I might have done so or I might have given it to Mr. Magin to give to him, but I don't recollect that fact.

X Q. 28. Who brought this model, "Complainant's Exhibit Meinhard Apparatus," to your office?

A. That I don't remember.

X Q. 29. Do you know who made this model?

A. I do not. I may have know- at the time, but if I did I have forgotten.

X Q. 30. Did Mr. Magin tell you who made it?

A. I don't remember.

X Q. 31. Did Mr. Magin tell you about a model made by Mr. Schantz?

A. Not that I remember now.

X Q. 32. He did not show you that model?

A. I don't remember who it was brought it to my office. It was at my office for several days.

X Q. 33. The model which was made by Mr. Schantz?

A. This model here—model of Meinhard apparatus.

X Q. 34. The complainant's exhibit?

A. Yes, sir.

X Q. 35. Did you not see the model made by Mr. Schantz?

A. I don't remember seeing any other model than this.

417 X Q. 36. Did Mr. Magin tell you about a model that Mr. Schantz had made?

A. I don't remember of his telling me of any other model than this one, and I don't remember who this was made by.

X Q. 37. Did Mr. Schantz tell you of having made a model of this Meinhard apparatus?

A. Not that I remember. I don't remember having any conversation with him about it, although I might.

X Q. 38. You never saw the model, then, that was made by Mr. Schantz?

A. I don't remember seeing any other model than this "Complainant's Exhibit Meinhard Apparatus."

X Q. 39. You prepared the petition for Mr. Magin for a rehearing in the cases of himself against McKay and Welker before you prepared these several affidavits, did you not?

A. No, sir. The two affidavits of Schantz and Koehler were, I believe, taken before the petition. I am not sure about the one of Stief, but I think that all three of those affidavits of Schantz and Koehler and Stief were prepared before the petition was prepared.

X Q. 40. Please look at the petition and see if it does not bear date October 8, 1885, as being verified on that day, and these several affidavits which you refer to as being verified on that day.

A. Yes, sir; but I explained, in answer to the first question on the direct examination, that the affidavits of Otto Schantz and Henry Koehler and Raymond Stief were first prepared by me and reduced to writing by me, and that afterwards they were printed upon

418 the typewriter and reverified before other notaries at the time when the petition was prepared for presenting to the court.

X Q. 41. And verified of the same date as the petition?

A. I think so; I think they were all reverified on the 8th of October.

X Q. 42. So the original affidavits made by these parties do not appear in these affidavits?

A. They became original affidavits when they again swore to them.

X Q. 43. But the first originals did not appear?

A. No, sir, the first originals did not.

X Q. 44. What became of these first original affidavits?

A. I have them in my pocket.

X Q. 45. Before Mr. Schantz went to Chicago did he have a talk with you about the taking of the affidavit of Mr. Hahn?

A. I don't remember talking with Mr. Schantz about Mr. Hahn's affidavit.

X Q. 46. Do you recollect his coming to your office with Mr. Magin and talking the matter over there before he went to Chicago?

A. He may have done so, but I have no recollection of it now.

X Q. 47. Did you have any correspondence with the notary in Chicago who was to take his affidavit?

A. No, sir; I did not.

X Q. 48. What was the notary's name?

A. I don't know.

419 X Q. 49. Do you know a notary in Chicago of the name of F. H. McCullough?

A. No, sir; I do not.

X Q. 50. Do you know of a law firm in Chicago with which Mr. McCullough is connected?

A. I do not.

X Q. 51. What was the name of the law firm that you gave to Mr. Schantz or to Mr. Magin to give to Mr. Schantz?

A. I never knew I gave any name.

X Q. 52. Can you give the name of the party to whom you recommended him to call upon while there?

A. I don't know that I recommended him to call on any one. I may have done so, but I don't remember it.

X Q. 53. Do you recollect the name of the party you gave to Mr. Magin or Mr. Schantz to take the affidavit of Mr. Hahn?

A. I have just said that I didn't remember giving the name of anybody.

X Q. 54. Did you also prepare the affidavit of Rufus F. Osgood on that motion for a rehearing?

A. I think not.

X Q. 55. I see it was verified before you.

A. Yes, sir.

X Q. 56. Who prepared that, if you know?

A. I presume Mr. Osgood prepared it himself, but I am not sure.

X Q. 57. Can you tell by looking at the affidavit who prepared it?

420 A. I can't tell from reading the printed copy of Mr. Osgood's affidavit that I prepared any part of it. I may have assisted, but I don't remember that I did.

X Q. 58. It was acknowledged before you, however, was it not?

A. It so appears. I don't remember that.

X Q. 59. Have you assisted Mr. Magin in preparing these cases for trial?

A. I have done nothing for Mr. Magin in any way whatever since April, 1886. I have not assisted in the present case.

X Q. 60. You were the examiner before whom complainant's tes-

timony was taken in the case of Michael Magin against James D. McKay and others, were you not?

A. Yes, sir.

X Q. 61. And after an adverse decision in that case you have acted as attorney for Mr. Magin on the application for a rehearing?

A. I did.

X Q. 62. And it was in that capacity that you prepared this petition and these several affidavits?

A. Hardly; it was as to the petition. When the first affidavits were taken of Schantz and Koehler I don't think anything had been said to me about assisting or preparing any application. The deponents were sent or brought in to me and I was requested to take down in writing what they knew about the matter and take their affidavits, which I did.

X Q. 63. And afterwards you prepared this petition?

421 A. I was acting rather as a simple notary than as an attorney. It was after that time that it was suggested that I should assist in preparing for the application.

Redirect examination by Mr. BENNETT, counsel for the complainant:

Re-D. Q. 64. As I understand you, Mr. Cronise, you first took the affidavits of Schantz and Koehler and Stief, and subsequently, having prepared the petition, you had exact copies of those affidavits made and verified on the same day of the petition?

A. Yes, sir.

(Signed) ADELBERT CRONISE.

Recess until 8.15 p. m.

8.15 P. M.

CHARLES GORDON, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Charles Gordon; my age is sixty-two, past; I reside in Rochester; my occupation is malster, one of the firm of Hathaway & Gordon.

Q. 2. Are you the Gordon to whom the letters patent upon which these suits are based were granted and issued?

A. Yes, sir.

Q. 3. Do you know Michael Magin, the complainant in these cases?

422 A. Yes, sir.

Q. 4. Do you know a Mr. Ernest Schaub, a plumber, residing in the city of Rochester?

A. Yes, sir.

Q. 5. Is he the same Ernest Schaub who was examined as a witness in these cases on the part of the defendants?

A. Yes, sir.

Q. 6. Were you in attendance and did you hear Mr. Schaub being examined as a witness?

A. Yes, sir.

Q. 7. Did you at any time, and, if so, when, meet Mr. Schaub in Mr. Magin's saloon, in this city?

A. Yes, sir; I met him there twice.

Q. 8. About when was it that you first met Mr. Schaub in Mr. Magin's saloon?

A. In the spring of 1883.

Q. 9. Was it during the pendency of the cases of Magin against Welker and against McKay?

A. Yes, sir; right away after Mr. Schaub had given in his testimony or just at the time, the first time I met him.

Q. 10. The first time you met him, then, at Mr. Magin's saloon was about the time he gave his testimony in those cases on the part of the defendants?

A. Yes, sir.

Q. 11. State fully the circumstances connected with your meeting Mr. Schaub at Mr. Magin's saloon, and what, if anything, was said at that meeting.

423 A. The first time I met Mr. Schaub in Mr. Magin's saloon I rather took him to do for his testimony. I told him that I didn't think he had told the truth about it. I told him that when he built that ice box for me at Mr. Farquhar's that he didn't know which way cold air traveled, whether it went up or down, because he asked me if I wasn't afraid there would be too much cold air flow up and out of the stove pipe that he put in there. He called the air passage a stove pipe.

Q. 12. The air passage from the lower to the upper box?

A. Yes, sir; a 3½-inch opening.

Q. 13. State what else took place.

A. He as much as said he did, and that I was saying false when I said so, the same that I had charged him in his testimony. I told him that he had sworn to his, and that I thought it was false, every word of it, and that I didn't believe a word he said, and he got very hot and mad and said if I hadn't been an old man he wouldn't take it from me, and I think he went out very mad and hot.

Q. 14. When you arrived at Mr. Magin's saloon did you find Mr. Schaub there?

A. Talking with Mr. Magin.

Q. 15. Schaub and Magin were talking together when you went in, were they?

A. Yes, sir.

Q. 16. After Schaub went out mad, as you say, did Mr. Magin tell you what Mr. Schaub had sent to him?

A. Yes, sir.

424 Q. 17. State what it was.

Defendants' counsel objected as incompetent.

A. He said that Mr. Schaub said that he had made a mistake by pitching onto the Rochester customers; that he ought to have taken

some outside infringers. Mr. Magin said he told him he didn't see what difference that would make.

Q. 18. Had Mr. Schaub previously worked for you in putting in one of your beer cooling and drawing apparatuses?

A. Yes, sir; I say he worked for me; he worked for Mr. Farquhar under my supervision and direction.

Q. 19. And Mr. Farquhar was putting in one of your beer cooling and drawing apparatuses under a license from you?

A. Yes, sir.

Q. 20. Did you instruct Mr. Schaub how to construct the apparatus?

A. Yes, sir.

Q. 21. At the time you gave Mr. Schaub instructions how to erect your beer cooling and drawing apparatus at Mr. Farquhar's did he or not appear to be familiar with such an apparatus?

A. He didn't seem to know anything about it, to my notion.

Q. 22. All seemed to be strange to him, did it?

425 A. Yes, sir; and made a sad mistake; a mistake that took me at least half a day to make good, even though I laid the work out for him all right.

Q. 23. After this first meeting with Mr. Schaub at Mr. Magin's saloon did you meet him there again?

A. Yes, sir.

Q. 24. When was that and how long after the first meeting?

A. A very few days, or it might have been a week or two.

Q. 25. On this second occasion did you find Mr. Schaub at Mr. Magin's when you entered?

A. Yes, sir; taking a glass of beer when I went in.

Q. 26. At the second meeting with Mr. Schaub at Mr. Magin's saloon what, if anything, took place?

A. He seemed to be very pleasant and asked me what I thought of the lawsuit now. I told him I didn't think much different of it. He again said Mr. Magin had made a mistake, he thought, and I told him I didn't know about that, and then he and Mr. Magin talked German, and Mr. Magin told me he said in German that he had made a mistake by pitching onto his customers, and called them customers; that he had sued his customers, and that if he hadn't done that he wouldn't have given in his testimony, and Magin said he said it wasn't too late yet; that he had given in his testimony, but he hadn't seen it yet, and if he would take him in and give him an interest in the business he wouldn't, and I

426 told him I thought the business wouldn't amount to anything unless the patent was worth something and he had better sign his testimony.

Q. 27. That is what you said to Mr. Schaub, was it?

A. Yes, sir.

Q. Did he leave then?

A. Yes, sir; he left within a minute after that. I told him as far as I was concerned I didn't want to have anything to say to him about the business.

Q. 29. Then Mr. Schaub's proposition to Mr. Magin was that he

wouldn't sign his deposition if Magin would give him an interest in the patent?

A. So Mr. Magin said he said to him in German.

Q. 30. Did you hear them talking in German?

A. Yes, sir.

Q. 31. When Schaub spoke of his customers did he refer to those parties for whom he (Schaub) had put in the beer drawing and cooling apparatus?

A. The ones, as I understood it, that Mr. Magin had sued; yes, sir; the ones he claimed he had put in.

Q. 32. Other than on these two occasions did you ever meet Mr. Schaub at Mr. Magin's saloon?

A. No, sir.

Q. 33. Prior to meeting Schaub at Magin's saloon did he have any talk with you about his testimony and its effect upon your patent?

427 A. Yes, sir. I met him at the time he was giving his testimony right out here in front of the Arcade, and he then told me Mr. Magin had made a mistake or that we had made a mistake; that we oughtn't to have commenced on Rochester parties, and that it was his testimony that was going to beat—"that you will find that it will be my testimony that will beat you—will beat the patent."

Q. 34. Schaub said to you that you would find that it would be his testimony that would beat the patent, did he?

A. Yes, sir.

Cross-examination by Mr. SULLIVAN, counsel for the defendants:

X Q. 35. You testified in the case of Magin against McKay and Welker, did you not?

A. Yes, sir.

X Q. 36. In that testimony you referred to these conversations you had with Mr. Schaub, did you not?

A. I think not.

X Q. 37. Didn't you undertake to give the conversation you had with Schaub in Mr. Magin's saloon?

A. No.

X Q 38. Were you not asked in that case by complainant's counsel if you had a conversation with Mr. Schaub in Mr. Magin's saloon and at which Mr. Magin was present, and you answered that you did?

A. I don't think I did.

428 X Q. 39. Did you not also hear Mr. Schaub testify in that case for the defendants, in which he related the conversation he had with you in Mr. Magin's saloon?

A. I don't remember of hearing any such testimony from Mr. Schaub.

X Q. 40. Didn't you hear Mr. Schaub state in substance as follows: "One night I stopped in Mr. Magin's place to intend to get

some information in regard to the patent. I told him that had to go to law with that, and that I was sorry that I had to fight against him. He stated that he knows it, but that is too bad. The same time I was talking to him Mr. Gordon came in, and he put different questions to me. He asked for whom I made the first one, where I saw them first, and afterwards he stated that when it comes to the end I didn't know anything at all. He felt kind o' insulted and left the house. I told him (Mr. Gordon) that I made the first one for Mr. J. Boehm; that I saw them before in the city of Berlin. That is what I answered him. Mr. Magin was present at this conversation. Mr. Magin told me in German that he knows that he got an old thing, and I stated to him that if he had come to me before he had bought the patent right I would have instructed him different. Then Mr. Gordon told me, when he comes to the point, that I didn't know anything about it. I felt insulted by that and left the store." Did you not hear Mr. Schaub give that testimony?

A. I think I did.

X Q. 41. And was that testimony true?

A. If it refers to the time he got mad there, I think it was. He got mad the first time.

429 X Q. 42. And that was the first conversation you had with Mr. Schaub in Mr. Magin's saloon?

A. I had a conversation with him down here.

X Q. 43. I asked if that was the first conversation you had with Mr. Schaub in Magin's saloon?

A. Yes, sir.

X Q. 44. And the conversation you had with him on the street was while he was giving testimony in that case?

A. I think it was; yes, sir.

X Q. 45. And there was only a few days between the different conversations that you had with him; is that true?

A. Yes, sir; that is so.

X Q. 46. And all these conversations with Mr. Schaub were had before yourself and Mr. Magin was examined as witnesses in that case, were they not?

A. Yes, sir; before I was, anyway.

X Q. 47. Upon your examination you were asked by complainant's counsel to state the conversations you had with Mr. Schaub and you endeavored to do so, did you not?

Complainant's counsel objected unless counsel points out to what portion of Mr. Gordon's deposition he refers.

A. I think that question was put to me, but it was in reference to what I had to say to him in Farquhar's saloon.

430 X Q. 48. Did you testify on that occasion that Mr. Schaub told you that you made a mistake in bringing suit against the Rochester saloon-keepers?

A. I don't think I did.

X Q. 49. Did you testify on that occasion that Mr. Schaub said to you that if you would make some arrangements with him in reference to this patent that he wouldn't sign his testimony?

A. I don' think I did.

X Q. 50. Or anything to that effect?

A. No, sir.

X Q. 51. Did you tell Mr. Selden, complainant's counsel, about these conversations that you had with Mr. Schaub?

A. I don't think I did.

X Q. 52. Who did you first speak to about these several converations?

A. I think I told him about the conversation I had with him at Farquhar's.

X Q. 53. Who did you ever speak to about these several conversations you have now testified to as having had with Mr. Schaub?

A. I wouldn't be certain whether I told Mr. Bennett or Mr. Magin, when he was giving his testimony in this suit.

X Q. 54. It was while he (Schaub) was giving his testimony in this suit that you recalled these conversations, was it?

A. Yes, sir.

X Q. 55. You attended pretty regularly the taking of the testimony in the case of Magin against Welker and McKay, did you not?

431 A. Well, moderately so. I wasn't there when they were all taken. I didn't hear any of Meinhard's and a day or two of Schaub's.

X Q. 56. Have you attended at each session of the taking of testimony in this case?

A. Pretty nearly all, I guess. I think so.

X Q. 57. And you have heard the different witnesses testify, have you not?

A. Yes, sir.

X Q. 58. Are you still interested in these letters patent?

A. Yes, sir.

X Q. 59. What interest have you in it?

A. I have territory that belongs to me.

X Q. 60 You have the United States, except that portion of it transferred to Mr. Magin, have you not?

A. No, sir.

X Q. 61. How much have you?

A. About a third interest.

X Q. 62. And who owns the other interest?

The witness is instructed not to answer that question as an effort to pry into his personal affairs and in no way involved in this controversy, the witness already having testified that he has a remaining interest in the letters patent in controversy.

X Q. 63. What interest has Mr. Magin in this litigation?

432 Same instruction to the witness, and, furthermore, that the assignment of record in this case is the best evidence as to the extent of Mr. Magin's title.

X Q. 64. Who else has an interest in these letters patent *q*esides yourself and Mr. Magin?

A. I don't think any one has.

X Q. 65. Have you assigned any territorial interest to any person except Mr. Magin?

A. No, sir.

X Q. 66. Do you still decline to state who owns the other interest aside from yourself and Mr. Magin?

Mr. BENNETT: You are instructed not to answer, for reasons already given, unless you prefer to disclose your own personal business.

A. I don't know that it is anybody's business.

X Q. 67. Then you refuse to answer, do you?

Mr. BENNETT: Exercise your own judgment about answering that question. You can decline to answer it if you prefer.

A. Then I so decline to answer it, because there is a reason why. I still have an interest in the patent.

X Q. 68. But you decline to state who has the other interest?

A. I think Mr. Magin has.

X Q. 69. And who else, if any person?

Mr. BENNETT: You need not answer any further unless you prefer.

X Q. 70. Do you decline to answer the question any further?

433 A. Yes, sir.

Defendants' counsel gives notice that unless the witness answers the question that he will, when this case comes on for a final hearing, make a motion to have all the testimony of this witness stricken from the record.

Complainant's counsel replies that he still instructs the witness to decline to answer the question as relating to his private business relations and in no way involved in this controversy.

X Q. 71. Where did you put up the first apparatus embodying the invention described in——

Mr. BENNETT: Don't answer that question, Mr. Gordon.

Defendants' counsel requests complainant's counsel to wait until the question is asked.

Complainant's counsel says, for the benefit of the court and to show the way in which defendants' counsel is conducting the examination, that the interruption he dictated himself to the stenographer and then after that put his request on record.

X Q. 72. Where did you put up the first apparatus embodying the invention described in the Gordon letters patent involved in this case?

Complainant's counsel instructs the witness to decline to answer for the very obvious reason that this witness was called and examined as to certain conversations that took place between him-
434 self and one Ernest Schaub and between Schaub and Magin at which the witness was present, and the question pro-

pounded is not in cross-examination and is wholly irrelevant and immaterial as to anything relating to the direct examination; furthermore, that this witness was examined in reference to the subject to which the question propounded goes in the cases of Magin against McKay and Welker, and a copy of his said deposition in said causes has been stipulated into this case and made a part thereof. You need not answer that question, Mr. Gordon.

X Q. 73. Do you decline to answer that question, Mr. Gordon?
A. If I used my own judgment about it I should answer it.

Mr. BENNETT: Then you may answer it, Mr. Gordon.

A. In Mr. Magin's saloon.
X Q. 74. When was it put in there?
A. In 1879.
X Q. 75. By whom?

Complainant's counsel, upon the theory that there must be an end to all things, instructs the witness, notwithstanding his willingness to answer the questions*tions*, to decline doing so and let the responsibility rest where it belongs, with the complainant's counsel.

X Q. 76. Do you refuse to answer that question*tion?*
435 A. Well, I am instructed not to.
X Q. 77. My question was, do you refuse to answer the question?
A. Yes, sir.
X Q. 78. Do you know Otto Schantz?
A. Yes, sir.
X Q. 79. How long have you known him?
A. I have known him by sight several years.
X Q. 80. Where did you first become acquainted with him?

The same instruction to the witness, and for the same reasons heretofore stated, and for the further reasons that, the defendants' case being closed, the complainants' counsel does not intend that under the guise of a cross-examination the defendants' counsel shall now proceed to put in further proofs.

You need not answer that, Mr. Gordon, under my positive instructions.

X Q. 81. Do you know Raymond Stief?

The same instructions.

X Q. 82. Do you refuse to answer that question?

Mr. BENNETT: I instruct you not to answer that.

A. Yes, sir.
X Q. 83. Do you know Henry Koehler?

Same instruction and for the same reasons.

X Q. 84. Do you refuse to answer that question?
436 A. Yes, sir.
Y Q. 85. Do you know Otto Hahn?

A. No, sir—yes, sir; I was simply introduced to him, but I shouldn't know him if I should meet him on the street. I never exchanged a word with the man only here.

Complainant's counsel states of record that he should have instructed the witness to decline to answer, and for the same reasons heretofore given, but the witness was too rapid in answer, and requests him to hereafter delay answering until counsel may have an opportunity to state what is necessary of record.

Defendants' counsel states for the information of the court that it is his belief that complainant's counsel had a motive in allowing the witness to answer the last question, for the reason that it appears in the testimony in this case that Mr. Otto Hahn has resided in Chicago for many years and very likely unknown to this witness, while the other witnesses are residents of Rochester and doubtless well known to this witness and with whom he has had several conversations about this Meinhard apparatus.

Complainant's counsel states that the foregoing statement by defendants' counsel being of his own imagination, it is probably, like many of his other statements of record, without the least foundation, and certain it is that there is nothing contained in the record upon which to base such a statement.

437 Redirect examination by Mr. BENNETT, counsel for the complainant:

Re-D. Q. 86. Have you had occasion recently to read your former depositions given in the cases of Magin against Welker and against McKay?

A. I haven't done it.

Re-D. Q. 87. Now, according to your best recollection, were you asked on your former examination about any conversation you had with Mr. Schaub, except such as related to the apparatus that was put in at Farquhar's?

A. I think that was the question.

Re-D. Q. 88. You were present, weren't you, during part of Schaub's cross-examination and while he was being questioned as to his visits to Magin's saloon?

A. Yes, sir.

Re-D. Q. 89. State whether or not during Schaub's cross-examination you informed me of your meeting with Schaub at Magin's saloon and requested me to cross-examine him in reference to them.

A. I think I did.

Re-D. Q. 90. And thereupon did I proceed to cross-examine Mr. Schaub as to what took place on his visits to Magin's saloon?

A. Yes, sir.

(Signed) CHARLES GORDON.

By consent, adjourned until December 22d, 9.45 a. m.

438 DECEMBER 22D—9.45 a. m.

Parties appeared as before.

MICHAEL MAGIN, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Michael Magin; age, forty-two; I live on the corner of Andrew and Water street-; I keep a saloon.

Q. 2. Are you the complainant in these cases?

A. I am.

Q. 3. Are you the same Michael Magin that was complainant in two certain cases against Welker and McKay?

A. Yes, sir.

Q. 4. Are you the same Michael Magin who was examined in your own behalf in those two causes?

A. Yes, sir.

Q. 5. Do you know one Ernest Schaub, a plumber, of the city of Rochester?

A. I do.

Q. 6. Were you present during the cross-examination of Schaub when examined as a witness in these cases?

A. I was.

Q. 7. Did you at any time have a conversation or conversations with Mr. Schaub in reference to the evidence which he had given and was giving in the cases against McKay and against Welker?

A. I did.

439 Q. 8. How many such conversations did you have with Mr. Schaub?

A. I had, I think, two.

Q. 9. State fully where your first conversation with Mr. Schaub took place, and who, if any one, was present and what was said.

A. The first conversation took place at my place, corner of Andrew and Water street-. Mr. Schaub came to my place about the time he had finished his testimony. He came in there and had a glass of beer. The first thing he told me was that he thought I had made a great mistake in attacking the saloon-keepers here in the city, which were his customers, and that he had to look out for their interest and it was his testimony that would be the means of beating me, and he thought that it would have been better for me if I had commenced those suits outside of Rochester; Buffalo, for instance, or some other city. I replied to Mr. Schaub, saying that if a man had any property, name it what you like, chickens, and if there were parties that stole those chickens here and other parties that lived in Buffalo, wouldn't it be most natural to commence suit against the parties living at home? Well, he said that this was another thing; this wasn't chickens; this was a patent.

About that time Mr. Gordon came in. Mr. Schaub said to Mr. Gordon, "I think we will beat you." Mr. Gordon replied by saying, "This thing will stand on its merits if you fellows don't lie too much." Mr. Schaub then said that he had already put those in in

Berlin, in the old country, and Mr. Gordon told Mr. Schaub that while he had employed him at Mr. Farquhar's, on West Main
440 street, that Schaub did not know whether cold air went up or down; that Schaub had made the remark that he liked the apparatus very well, all except that stove-pipe hole, as he thought too much of the cold air would go up through that stove-pipe hole. Mr. Schaub then got mad and said, "I think you take me for a fool," or words to that effect, and walked away.

Q. 10. Mr. Schaub left your saloon then, leaving you and Mr. Gordon still there?

A. Yes, sir.

Q. 11. When was it that you had your next conversation with Mr. Schaub and where and who, if any one, was present and what was said?

A. It was a few days afterwards; perhaps ten or twelve days. Mr. Schaub came in on that occasion and asked me, saying, "Well, what do you think of the patent now?" "It is too bad that you have made such a mistake and commenced these suits against my customers, but it isn't too late yet, as I haven't signed my testimony and it is of no use until signed, but I see that there is a great deal of money in putting up these apparatuses, and if you and I can agree together and enter into partnership I will not sign my testimony, and they can't do anything to me for it." About that time Mr. Gordon came in. Mr. Schaub turned to Mr. Gordon and asked him, "What do you think of the suit now?" Mr. Gordon said, "I would have liked it better if you fellows would give straighter testimony," or words to that effect—"would tell the truth"—and Mr. Schaub then turned around to me and told me in German, "Well," he says, "there is a good deal of money in this, if you consider this thing, and you and I can control it and we will go into partnership together; I will not
441 sign my testimony." I turned to Mr. Gordon and translated this conversation to Mr. Gordon, and Mr. Gordon told Mr. Schaub, "What is the use of a partnership as long as there is no patent; you had better sign your testimony, Mr. Schaub." Mr. Schaub then finished his beer and left.

Q. 12. How long did you say Mr. Schaub was at your place during his second visit?

A. I should say about twenty-five minutes or half an hour; somewhere along there.

Q. 13. How long was he at your place on the first visit which you have spoken of?

A. Perhaps twenty or twenty-five minutes, or somewhere along there.

Q. 14. Do you know one Albert Stief, of this city?

A. I know him slightly. Yes, sir.

Q. 15. Did you at or about the time of your obtaining affidavits to be used on motion to reopen your case as against McKay and against Welker have a conversation with Albert Stief; and, if so, when and where, and what was said?

A. I did have a conversation with Albert Stief some time in October, 1885. I just came from Mr. Cronise's office with Mr. Englert

and came through Exchange place here, and Mr. Englert said to me that there was Albert Stief. I didn't know Albert Stief before that time. I jumped off from the wagon and asked him if he was Albert Stief and he said he was. I asked him if he would come up to Mr. Cronise's office and give his affidavit. He said, "No; I guess not. In the first place, I don't remember much about it, and, in the second place, I am a bartender and you know how that is. I have to be around these people," so I saw there was no use——

442 Defendants' counsel objected to what witness saw.

Well, I thought——

Defendants' counsel objected to what he thought, but that he might state what he said.

Q. 16. Go on, Mr. Magin, in your own way.

A. I saw that——

Defendant's counsel objected.

WITNESS, continuing: I said to Mr. Stief, "All right," and got into the wagon and drove off.

Q. 17. Do you know John Meinhard, of Rochester?

A. I do.

Q. 18. The same John Meinhard who has testified as a witness in these causes on behalf of the defendants?

A. Yes, sir.

Q. 19. If Mr. Meinhard at any time visited your place and there had a conversation with you state when it was and what took place.

A. Shortly after the filing of the complaint in the cases of Magin against McKay and Magin against Welker Mr. Meinhard came to my place. It was just at noon or half past twelve. I was just eating my dinner. I was called up by my wife's sister, who tended the bar while I was eating dinner. She said there was a gentleman who wanted a circular. I came upstairs and saw that it was Mr. Meinhard. I said, "How do you do, Mr. Meinhard?" He said, "How do you do?" He then said he heard that I had a patent and that there was some lawsuits about it, and he

443 came there to get a circular. I told him I did have a patent, and those lawsuits were for testing the validity of the patent. I then walked around behind the bar and opened the drawer in which I kept the circulars, and handed Mr. Meinhard, I think, two circulars. I then said to Mr. Meinhard, "Seeing that you are here, why not look at the original?" Mr. Meinhard said, "I might as well." I invited him behind my bar, up to where the upper ice box was located, and I took off the cover to the upper ice box and called Mr. Meinhard's attention to the galvanized iron lining in the upper ice box, and told Mr. Meinhard that there was half an inch of resin filling all around the sides and bottom of that upper ice box, between the galvanized iron and the wood.

I asked Mr. Meinhard to rap against the sides of this galvanized iron in order to feel the soundness of it. I then scraped away the ice from the bottom of the upper ice box, and showed Mr. Meinhard

the hole in the bottom of the ice box through which the beer pipes ran down into the lower ice box. I told Mr. Meinhard that the water from the melted ice and the cold air passed down around the beer-supply pipes into the lower ice box; that there was no cold wasted, as the pipe leading down into the lower ice box was protected with a resin filling, and that the cold air from the upper ice box served to cool the lower ice box as well.

I then called Mr. Meinhard's attention to the beer faucets, and I told him that there was a resin jacket; that those beer faucets were supplied with a resin jacket which prevented the beer from getting warm at intervals when there was no beer sold. I then
444 opened a little cupboard underneath the bottom of the upper ice box, and I showed Mr. Meinhard the resin-filled pipe, and asked Mr. Meinhard to rap against that pipe and feel the soundness of it, which he did. Mr. Meinhard then asked me whether the patent was on the resin. I told him that it was not; that I would show him when we got down-stairs. We then went down-stairs into the lower ice box, and I lit the gas jet in the lower ice box, and I walked up to the end of the pipe which surrounds the beer-supply pipes and cold-air passage, and I then asked Mr. Meinhard to step up to the end of that pipe.

I told Mr. Meinhard that those pipes came down through that hole which I showed him in the bottom of that upper ice box, and the cold air and water followed down those beer-supply pipes. I asked Mr. Meinhard to hold his hand at the bottom of this pipe to feel the cold air and the drip, which he did. Mr. Meinhard then said, "Well, well; you have a very complete thing; the best thing I ever saw. I have pressure, but mine is the common pressure. I have no connection like this," pointing to the end of the pipe surrounding the beer-supply pipes and cold-air passage. I told Mr. Meinhard that as near as I could learn the pressure was old, but that this invention was a novel one. He then said, "Everything looks so nice and clean," and "I will read my circulars and get myself better acquainted with this patent." We then came upstairs and had another glass of beer, and Mr. Meinhard left. That is all that I remember.

Q. 20. Did you give Mr. Meinhard some of your circulars?

A. I did.

445 Q. 21. And was it those circulars that he said he would read and get better posted on the patent?

A. Yes, sir.

Q. 22. Prior to this visit of Mr. Meinhard's had he been in the habit of coming to your saloon?

A. I don't remember ever seeing him in my place; he may have been there, but not that I can remember.

Q. 23. Has he been there since that time, to your recollection?

A. No, sir; not that I know of.

Q. 24. Have you with you a circular such as you gave Mr. Meinhard?

A. I think I have.

Witness produces circular, which is offered in evidence and marked "Complainant's Exhibit Magin Circular."

Q. 25. Did Mr. Meinhard on leaving your place take with him these circulars which you gave him?

A. He did.

Cross-examination by Mr. SULLIVAN, counsel for the defendants:

X Q. 26. This conversation, you have stated, that you had with Mr. Meinhard in your saloon was while the testimony in the suits of Michael Magin against McKay and Welker was being taken in this city, was it not?

A. It was before there was any testimony taken.

X Q. 27. But after the suits had been commenced?

446 A. Yes, sir.

X Q. 28. Shortly after you commenced the suits against McKay and Welker it became pretty generally known by the saloonkeepers of Rochester, did it not?

A. Yes, sir.

X Q. 29. A notice of it was published in our city papers?

A. Yes, sir.

X Q. 30. You were examined as a witness in those cases, were you?

A. Yes, sir; I think I was. Do you meam to prove the infringement?

X Q. 31. You may answer my questions, please, and nothing more.

A. Yes, sir.

X Q. 32. And that was after you had this alleged conversation with Mr. Meinhard?

A. Yes, sir.

X Q. 33. Did you refer to that conversation in your testimony?

A. I did not.

X Q. 34. You were present while the testimony of Mr. Meinhard was being taken in those cases, were you not?

A. I was.

X Q. 35. Upon his cross-examination do you recollect of your counsel asking him about his visit to your saloon?

A. I think I do.

X Q. 36. And you heard him give his testimony on that subject, did you not?

447 A. I did.

X Q. 37. And when you were examined you didn't deny the truthfulness of that testimony, did you?

A. Of the Meinhard testimony?

X Q. 38. Of the Meinhard testimony, so far as that conversation in reference to the saloon was concerned.

A. I was not asked.

X Q. 39. I asked you if you denied it while giving your testimony.

A. I did not.

X Q. 40. You also made one or more affidavits in the same cases on your motion for a rehearing, did you not?

A. I did.

X Q. 41. Did you in either of those affidavits refer to that conversation you had with Mr. Meinhard in your saloon?

A. I don't think I did.

X Q. 42. You have known Mr. Meinhard for how many years as a saloon-keeper of Rochester, have you not?

A. I have known him several years.

X Q. 43. About how many years?

A. I couldn't tell exactly how many years. I knew him at Falls Field. I never was very well acquainted with him. I knew his name was Meinhard, but I never had any——

X Q. 44. You know him better by reputation than personally?

A. Yes, sir.

448 X Q. 45. Hasn't he been considered one of the leading saloon-keepers in Rochester for a good many years?

A. I couldn't say that.

X Q. 46. Was he not for many years the proprietor of the largest saloon and beer garden in the city at that time?

A. I couldn't say as to that.

X Q. 47. Do you not know that he was the proprietor of Falls Field garden, in this city, for many years?

A. I do. I know that Falls Field was a sort of concert place, but I didn't know anything about the reputation——

X Q. 48. Please answer my questions only and volunteer nothing. Is he not at present and has he not for many years been proprietor of Germania hall, in this city?

A. I knew he was down at Germania hall; yes, sir.

X Q. 49. Did you not hear that he purchased Germania hall at a large sum of money?

Mr. BENNETT: You need not answer that.

A. I don't know anything about Mr. Meinhard's business.

X Q. 50. How long has he been proprietor of Germania hall?

A. That I couldn't swear to from my own knowledge, because I used to attend to my business very close and I didn't get around much.

X Q. 51. What is your best knowledge on that subject?

449 A. I couldn't tell you what year he came there, only from hearsay; from hearing the witnesses testify.

X Q. 52. You have visited his place of business?

A. I have been there.

X Q. 53. And is it not generally understood that Mr. Meinhard is the sole proprietor of Germania hall?

Complainant's counsel has delayed interrupting the cross-examination in hope that defendants' counsel would within a reasonable time at least recognize the rules of evidence and conduct a cross-examination and not proceed to interject into this witness' exami-

nation matters entirely foreign to his direct examination, and, since there seems to be no inclination to terminate, instructs the witness to decline to answer.

Defendants' counsel states that it is quite apparent from the conduct of complainant's counsel that he is inclined to take up the greater part of the time given to the trial of these cases in placing of record his protests and explanation of how he would like defendants' counsel to examine witnesses and what the witnesses should testify to and what they should not testify to, and it will be observed that these protests and interruptions are invariably brought in while defendants' counsel is cross-examining the witnesses on the most important and material points in this case, and it
450 is my opinion that such interruptions and protests are made to inform the witnesses what they shall testify to, and it is certainly very improper and unprecedented in my experience in the trial of any cause in a court of justice.

Complainant's counsel concedes that it is probably unprecedented in the experience of defendants' counsel in the trial of causes, because they are so limited and have been of such a character as where well-settled rules of evidence have not probably been regarded.

You need not answer that question, Mr. Magin.

Defendants' counsel states that it is quite evident that complainant's counsel presumes that because he is a stranger in our city and comes from New York that he is at liberty to conduct himself in a manner such as he very likely would not be guilty of doing at home, where he is best known, and defendants' counsel will leave the court to judge of the propriety of his conducting these cases in the city of Rochester.

The question was read to witness and complainant's counsel instructed the witness not to answer the question.

X Q. 54. Who was present when you had this alleged conversation with Mr. Stief that you have referred to?

A. Mr. George J. Englert.

X Q. 55. Is he the George J. Englert who testified in your behalf in these cases?

451 A. Yes, sir.

X Q. 56. And I understand you to say that you met Mr. Stief while on your way with Mr. *Mr.* Englert from Mr. Cronise's office after Mr. Englert made his affidavit for a rehearing in the case of Magin against Welker and McKay?

A. Yes, sir.

X Q. 57. After that alleged conversation with Mr. Stief you made some affidavits to be used in that rehearing, did you not?

A. I did.

X Q. 58. In either of those affidavits did you refer to this alleged conversation you now say you had with Mr. Stief?

A. I said that I——

X Q. 59. I asked you——

A. I don't think I said anything about the alleged conversation, but I said I would try to get him personally.

X Q. 60. Did you, in that affidavit which you made, intend stating the conversation that you had with Mr. Stief, and did you so state?

A. At the time of making the affidavits I told Mr. Cronise about the conversation had with Mr. Stief and Mr. Cronise said that it was not necessary to mention the conversation; to only show that I had tried to get Mr. Stief to testify.

X Q. 61. Then you did state to Mr. Cronise the whole of the conversation that you had with Mr. Stief?

A. I did.

X Q. 62. And he did not put it in the affidavit for the reasons which you now state?

452 A. No, sir.

X Q. 63. This alleged conversation which you say you had with Mr. Schaub was also had before you made the affidavits in the same case?

A. Yes, sir.

X Q. 64. Did you refer in those affidavits to that conversation had with Mr. Schaub?

A. I think I did not.

X Q. 65. Why did you not set out in your affidavits this alleged conversation which you had with Mr. Schaub?

A. I thought it was time enough to do that at the time of the granting the order for a rehearing.

X Q. 66. Did Mr. Cronise so inform you?

A. He did not.

X Q. 67. Did you tell him of this conversation that you had with Mr. Schaub?

A. I don't remember now whether I did or not.

X Q. 68. Did you tell him about the conversation you had with Mr. Meinhard?

A. I don't know that I did.

X Q. 69. What was your reason for thinking that when the rehearing was granted you that it was time enough then to refer to these conversations had with Mr. Schaub and Mr. Meinhard and Mr. Stief?

A. After my defeat in the McKay and Welker suits I spoke to Mr. Theodore Bacon. I asked Mr. Bacon what I was to do in order to get this rehearing. I told him I was satisfied that Mr. Meinhard did not have this invention that he claimed. Mr. Bacon then

453 told me that in order to get a rehearing that I must have several affidavits and ask Judge Blatchford why not such a rehearing should be had on the introduction of newly discovered evidence. I felt quite assured from what I knew I could get those witnesses, and for that reason I paid more attention towards securing those witnesses than to any conversations had between either Schaub or Meinhard, as I thought there would be sufficient time to show that at the rehearing.

X Q. 70. Did Mr. Bacon so inform you?

A. I think I told Mr. Bacon that I didn't believe that Meinhard had this invention, and I think Mr. Bacon told me, "You just find out who were the users who worked for Meinhard, and if they show that Mr. Meinhard didn't have the invention Judge Blatchford will readily grant you a rehearing."

X Q. 71. Did Mr. Bacon tell you that upon a rehearing being granted you that you could then give in evidence these conversations which you had with these several parties?

A. I don't remember now whether or not. I know that I told Mr. Bacon what I knew, but I don't remember anything, whether he told me that or not.

X Q. 72. You told him of these conversations which you had, did you?

A. I think I did.

X Q. 73. And what did he say to you about these conversations?

A. Well, he simply told me to get those affidavits from the parties that had worked for Meinhard, and that in order to get a re-
454 opening I would have to have a preponderance of evidence, and I asked Mr. Bacon what constituted a preponderance of evidence and I think he told me three or four.

X Q. 74. Did he tell you that it was not necessary for you to embody in your affidavit the conversations which you had with these parties?

A. He did not.

X Q. 75. What did he say about that?

A. I don't know that he said anything to me about that. He just advised me to find out the parties that knew anything about their apparatus, and get their affidavits.

X Q. 76. After this talk you had with Mr. Bacon did you retain Mr. Cronise to prepare these affidavits?

A. I don't think that I did.

X Q. 77. When did you retain Mr. Cronise?

A. I don't really remember when I did retain Mr. Cronise. I know that I set about, after having a talk with Mr. Bacon——

X Q. 78. It was after the talk, then, which you had with Mr. Bacon that you saw Mr. Cronise?

A. Yes, sir.

X Q. 79. And did you state to him what Mr. Bacon instructed you to do?

A. I don't think that I did.

X Q. 80. Did you tell him you had consulted Mr. Bacon?

A. I did when I came there with Mr. Otto Schantz.

X Q. 81. Did you also tell Mr. Cronise what you expected to prove if a rehearing was granted you?

455 A. I did.

X Q. 82. After this talk with Mr. Cronise he got up your petition for a rehearing, did he not?

A. I think so.

X Q. 83. And he also prepared the several affidavits which you made on that motion for a rehearing?

A. Yes, sir.

X Q. 84. Did Mr. Selden assist you in preparing these affidavits?
A. No, sir.
X Q. 85. Didn't he prepare any of the affidavits?
A. I think he prepared his own.
X Q. 86. And in none of these several affidavits used on the motion for a rehearing did you refer to these alleged conversations which you say you had with Mr. Meinhard, Mr. Schaub, and Mr. Stief, except what was said in your affidavits about the conversation had with Mr. Stief?
A. That is all, I think.
X Q. 87. When was it that Mr. Meinhard called at your saloon to inspect your apparatus?
A. It was right away after filing of the complaints in the cases against McKay and Welker.
X Q. 88. And what year was that?
A. 1882.
X Q. 89. When did you put this apparatus in your saloon?

Complainant's counsel — for the reasons already stated, and for the further reason that no reference was made on the direct
456 examination to the construction of the Magin apparatus; he is instructed to decline to answer. You will not answer that question, Mr. Magin.

X Q. 90. Do you decline to answer the question?
A. I am so instructed by my counsel.
X Q. 91. And you so decline, do you?
A. It is for my counsel to say.
X Q. 92. I ask you if you decline to answer the question.

Mr. BENNETT: I instruct you not to answer it, Mr. Magin.
Mr. BENNETT: Say you do because I instruct you to.

A. I do because my attorney instructs me to.
X Q. 93. Who put this apparatus in for you?

Same instruction by complainant's counsel.

A. Mr. Bennett does not want me to answer that question.
X Q. 94. Then you refuse to answer the question?
A. I do.
X Q. 95. Have you used that apparatus from the time you put it in to the present time?

Same instruction.

A. I refuse to answer.
X Q. 96. Did Mr. Gordon, your associate in this litigatien, assist you in putting in your apparatus?

Same instructions to the witness by complainant's counsel.

457 A. I refuse to answer.
X Q. 97. Didn't you testify in the cases of yourself against McKay and Welker that you put this apparatus in your saloon in 1879?

Same instructions.

A. I refuse to answer the question.

X Q. 98. Did you not also testify that Mr. Gordon did not apply for the letters patent on which those suits were brought until about two years after you put in your apparatus?

Same instructions, and for the further reason that the records will show, and likewise the application for patent as to the matters inquired of are the best evidence.

Same refusal.

X Q. 99. What interest have you in these letters patent?

Same instructions and for the same reason, and for the further reason that the best evidence is the title record which now forms a part of the record in these cases.

Same refusal.

X Q. 100. Is your interest in these letters patent in writing?

Same instructions and refusal.

X Q. 101. Has Mr. Gordon an interest in this litigation?

Same instructions and same refusal.

X Q. 102. Has Mr. Bennett, your counsel, an interest in this litigation?

A. No, sir; any more than his salary.

X Q. 103. Retainer?

458 A. Yes, sir; or retainer; that is all.

X Q. 104. What became of the model of the Meinhard apparatus which Mr. Schantz made for you at your request?

Complainant's counsel, while feeling justified in instructing the witness to decline to answer as an attempt to inquire into matters foreign to the direct examination, nevertheless, as it relates to a model of the Meinhard apparatus constructed by Schantz, one of the complainant's witnesses, will permit the witness to answer the questions, calling the defendants' attention, however, to the rule that in doing so he makes the witness his own and will be bound by his answers.

A. It has been destroyed; used it for kindling.

X Q. 105. And who made this model, "Complainant's Exhibit Model Meinhard Apparatus"?

A. Mr. Kimball.

X Q. 106. Who is Mr. Kimball?

A. He is a carpenter in the employ of Hathaway & Gordon, ale brewers.

X Q. 107. Under whose instructions did he make it?

A. I brought the model up to Mr. Gordon's brewery and told Mr. Kimball that Mr. Gordon would tell him what to do.

X Q. 108. Is the Mr. Gordon you refer to the same Mr. Gordon who has testified in these cases?

A. Yes, sir.

X Q. 109. And is he the patentee of the invention in controversy in these cases?

459 A. Yes, sir.

Redirect examination by Mr. BENNETT, counsel for the complainant:

Re-D. Q. 110. You have stated that Mr. Englert was with you when you met Mr. Albert Stief on the street. Did Mr. Englert hear the conversation which you had with Mr. Stief?

A. Mr. Englert sat in the wagon. I got out of the wagon and we stood right by the side of the wagon. I am not quite sure he heard it.

Re-D. Q. 111. Then, if I understand you, you and Mr. Englert were going along in Englert's wagon when Mr. Englert pointed Stief out to you and you got off the wagon and had a talk with him?

A. Yes, sir.

Re-D. Q. 112. You say after your defeat in the Welker and McKay cases you consulted with Mr. Theodore Bacon, a counsellor-at-law of this city?

A. Yes, sir.

Re-D. Q. 113. Upon whose advice did you go to Mr. Bacon?

A. I don't know whether it was Mr. Selden's or not.

Re-D. Q. 114. You think it was upon Mr. Selden's advice, do you?

A. I think it was.

Re-D. Q. 115. After taking counsel with Mr. Theodore Bacon you then employed Mr. Cronise to draft the affidavits, did you?

A. Yes, sir.

Re-D. Q. 116. You were asked if I had any interest in the

460 patent in controversy. State whether or not I have any interest in any manner or way whatsoever either in this patent or the result of this controversy.

A. No, sir; no interest whatever more than your fees.

Re-D. Q. 117. And those you pay me as I render my account, do you?

A. Yes, sir; I expect to.

Re-D. Q. 118. You were asked on your cross-examination as to being present during Mr. Meinhard's cross-examination and hearing him cross-examined as to his visit to your saloon and the examination of your beer cooling and drawing apparatus. Had you there reference to Mr. Meinhard's examination in these present cases or in the first cases?

A. In the first cases.

X Q. 119. Have you recently read a copy of Meinhard's testimony given in the first cases, the cases against McKay and against Welker?

A. Not recently; I have read it through.

Re-D. Q. 120. You were present and heard Mr. Meinhard's cross-examination on his examination in these suits, weren't you?

A. Yes, sir.

Re-D. Q. 121. And heard him cross-examined about his visit to your saloon?

A. Yes, sir.

Re-D. Q. 122. You have been questioned as to the model Schantz made and delivered to you. State how Schantz came to make and deliver that model to you and for what purpose you had it made.

461 A. After I had talked with Mr. Schantz of what he knew about this Meinhard apparatus I asked him if it would be any trouble to him to make me a rough model or to make me a model. He said, "I can make you one, but it won't be a very nice one." I said, "That doesn't make any difference; all I want is the idea as you saw it at Meinhard's." He said he would, and he did, and brought it there to my place.

Re-D. Q. 123. And was it this Schantz model that you took to Mr. Gordon's brewery?

A. Yes, sir; it was.

Re-D. Q. 124. And you delivered it to Mr. Gordon's carpenter, did you?

A. Yes, sir.

Re-D. Q. 125. For what purpose did you deliver it to Mr. Gordon's carpenter?

A. I had shown this model to Mr. Gordon and Mr. Gordon said, "This Englert has a very clear idea of the Meinhard apparatus, and I think we had better go down to this where Falls Field used to be, and I will take some measurements; I will then tell Mr. Kimball to make a better finished model than this one," referring to the old rough model.

Re-D. Q. 126. Referring to the Schantz model?

A. Yes, sir; so we did go down with Mr. Englert, and Mr. Gordon took the measurements, and Mr. Gordon told me that I might take the model up to the brewery. So I brought the model up and set it on the work-bench and told Mr. Kimball that Mr. Gordon would tell him what to do.

Re-D. Q. 127. Was this model, "Complainant's Exhibit Meinhard Apparatus," made after the Schantz model, and is it a duplicate of it?

462 A. It is, as near as I can remember.

Re-D. Q. 128. Having examined the Schantz model, is this model, "Complainant's Exhibit Model of Meinhard Apparatus," a correct duplicate of that Schantz model?

A. I think it is. It embodies the principles, only the workmanship is better.

Re-D. Q. 129. Other than being more perfect in workmanship, is there any difference between this model, "Complainant's Exhibit Meinhard Apparatus," and the rough model Schantz made for you?

A. I think not.

Re-D. Q. 130. Then, as I understand you, you and Mr. Gordon with Mr. Englert went down to Falls Field and took certain measurements preparatory to making a finished model?

A. Yes, sir.

Re-D. Q. 131. And from those measurements and this model of Schantz's this model, "Complainant's Exhibit Model Meinhard Apparatus," was constructed?

A. Yes, sir.

Re-D. Q. 132. After taking this Schantz model to Mr. Kimball, Mr. Gordon's carpenter, did you afterwards see it?

A. I saw it after it was finished. Mr. Kimball brought it to my place.

Re-D. Q. 133. What did he bring to your place?

A. He brought down this model (Complainant's Exhibit Model Meinhard Apparatus) and the rough model which I had before carried up to him.

463 Re-D. Q. 134. The Schantz model?

A. Yes, sir.

Re-D. Q. 135. Did you then compare the two to see if they were correct?

A. I did.

Re-D. Q. 136. And after that what did you do with the Schantz model?

A. I broke it up. I thought it was no more use.

(Signed) MICHAEL MAGIN.

It was admitted by defendants' counsel that John Boehm, who was examined as a witness in the case of Michael Magin against James D. McKay and Eugene Welker, in two certain actions brought in this court, died in ——.

FRANK E. WITHERSPOON, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is Frank E. Witherspoon; age, thirty-eight; reside in Rochester; register of the water works department.

Q. 2. As register of the city water works, do you have under your control the rules and regulations as regards the size of hydrants and other water supplies to premises in the city of Rochester?

A. Under certain rules as made by the executive board; I do the enforcing of those rules.

464 Q. 3. What was the rule in 1875 and 1876 and what has been the rule since that time as regards the ordinary size hydrant connection for household purposes?

A. The size not to exceed three-quarters of inch, with a quarter of an inch orifice, unless by special permission.

Q. 4. In case of special permission for a larger sized opening would application have to be made and a record kept of that special permit if granted?

A. Yes, sir.

Q. 5. Will you read from your book of rules and regulations that section referring to the size of dydrant openings in 1875 and 1876 and since then?

A. I don't know that the rule has been changed, so I will read the rule in 1876. This is from the rules and regulations as laid down by the executive board for 1876: "Rule 23. Sprinkling will be allowed only from April 1st to December 1st, for one hour between six and nine o'clock a. m., for one hour between six and eight o'clock p. m., and with hose three-quarters of an inch in diameter, having a nozzle with quarter-inch orifice. If either is larger, an extra charge will be made and will require a special permit therefor."

Q. 6. And has that rule continued in force since that time?

A. It has never been altered, to my knowledge. The present rule applies now.

Q. 7. Are you familiar with the property know as Falls Field, in the city of Rochester?

465 A. Yes, sir; I know where the property is located.

Q. 8. Who is the owner of that property, and who has been for years past?

A. James M. Whitney.

Q. 9. In case of application being made for special permission under the rule you have read would it be made in the name of the property-owner or the lessee?

A. It would be made in the name of the property-owner.

Q. 10. Do you know who was the lessee of that property in 1877, 1878, and 1879?

A. No, sir.

Q. 11. Have you examined the books of the water department for the purpose of seeing if application was made for special permission and if any special permit was granted in connection with this property known as Falls Field since 1875?

A. I have.

Q. 12. Was any application made and any special permit granted?

A. Not that I could find any record of; no, sir.

Q. 13. From the fact that your search disclosed no record of an application for or special permit granted, what do you say was the size of the water-supply pipes at Falls Field in the years 1876 and 1877, 1878, and 1879?

A. The supply pipe would be larger, perhaps, than the openings from the pipe.

Q. 14. I want the size of the opening to which the hose would have to be attached.

466 A. It would have to be put in under those rules—three-quarters of an inch, with a quarter of an inch orifice.

Q. 15. Three-quarters of an inch would be the largest except in case of a special permit?

A. Yes, sir.

Q. 16. And no special permit was granted as far as that property is concerned?

A. No, sir.

Q. 17. Did the rule which you read apply to all the city of Rochester during these years?

A. Yes, sir.

Cross-examination by Mr. SULLIVAN, counsel for the defendants:

X Q. 18. Do you know if there was a separate hydrant for use in Falls Field while the same was occupied by John Meinhard?

A. I don't know anything about John Meinhard. I don't know when he was there, and don't know anything about it.

X Q. 19. Do you recollect if there was a fountain in the garden of Falls Field?

A. Yes, sir; there was.

X Q. 20. And for the use of such water fountains is there an extra charge made by the water works?

A. Yes, sir; there is.

X Q. 21. Would the same size taps be used in such a fountain as would be ordinarily used for street-sprinkling purposes?

A. No, sir; it would be smaller.

X Q. 22. What size would they be?

467 A. An eighth of an inch would be an extremely large one. They run eighths and sixteenths and thirty-seconds.

X Q. 23. Do your books show that such faucets or hydrants were used in Falls Field while owned by Mr. Whitney?

A. To answer that I will read from the report of the inspector. There is a report of the inspector on the 29th of June, 1876. Property of James M. Whitney, North St. Paul street. He reports a garden, with a fountain, one hose bib or attachment, one plain bib in the cellar, and a water-closet on the first floor and two urinals and two water-closets on the third floor. That, I guess, is in the house. The service was metered. We had a meter on there that metered all the water used.

X Q. 24. Is there any entry in this memoranda book which you have produced which shows the size of that bib?

A. There is not; not there.

X Q. 25. What do we understand by a bib?

A. A bib is a fixture to draw water through. In our phraseology a plain bib is without a thread, and hose attachment is a bib with a thread to screw it on.

X Q. 26. These bibs are a part of the fountain; to each bib the hose is attached?

A. No, sir; not a part of the fountain.

X Q. 27. Is this bib not fastened to the fountain?

468 A. No, sir; it is a direct connection to the pipe from the top of the ground. The pipe runs from the main pipe to the top of the ground, with a thread attachment on the end of it on which you can screw the hose.

X Q. 28. And the thread attachment is what you call the bib?

A. Yes, sir.

X Q. 29. And forms no part of the fountain?

A. No, sir.

X Q. 30. And what was the ordinary size water attachment used for sprinkling purposes at that time?

A. Three-quarters-inch pipe with a quarter-inch orifice.

X Q. 31. What would be the size of a hose which would fit on such an attachment?

A. That is the size of the hose.

X Q. 32. Would the hose be three-quarters inside or outside?

A. Would be three-quarters inside diameter.

X Q. 33. That would be about an inch outside, I suppose?

A. Yes, sir; I should think so.

X Q. 34. That is the ordinary sized hose used for such purposes?

A. Yes, sir; the same as everybody uses for ordinary sprinkling.

X Q. 35. Are there any hose larger than three-quarters inch in diameter used for sprinkling purposes, to your knowledge?

A. Not to my knowledge; no, sir.

X Q. 36. The general size is three-quarters?

469 A. Yes, sir.

X Q. 37. That is the size that is allowed by the water works department of this city?

A. Yes, sir.

X Q. 38. What kind of a coupling is required to be used in attaching the hose to the water works for sprinkling purposes?

A. It does not restrict them in regard to that.

X Q. 39. Is there any particular kind of coupling used?

A. Not that I know of.

X Q. 40. Describe the kind that is generally used for that purpose.

A. Anything that would screw on there so as to make a water-tight joint would be allowable. The use of leaky or defective hose is strictly prohibited under any circumstances.

X Q. 41. Please describe the kind of coupling that is used for that purpose.

A. I can't do it; I don't know.

X Q. 42. Are you familiar with the attachments that are used and for that purpose?

A. No, sir; I am not. We don't grant permission for those nor sell them nor have anything to do with them except restricting the size.

X Q. 43. Have you not seen the attachments used for the purpose of connecting hose to the water works for sprinkling purposes?

A. Yes, sir.

X Q. 44. You will please describe that attachment.

470 A. The attachment would simply be an inside thread to screw onto an outside thread, making a water-tight joint, as I said before.

X Q. 45. Would it be a coupling with a thread at each end of it?

A. I don't understand you. There is a thread on the pipe as it comes up, and you have to have a corresponding thread screw onto that to make a tight joint.

X Q. 46. You say there would be a thread on the inside—on the inside of what?

A. Of the joint or coupling.

X Q. 47. Suppose you had a rubber hose the proper size which

you wished to attach to the water works department, what kind of a coupling would ordinarily be used for that purpose and how would you make the attachment?

A. You couldn't very well do it until you attached the attachment to the rubber hose and then screwed it onto the pipe.

X Q. 48. What do you mean by the attachment?

A. The part that makes the joint.

X Q. 49. What kind of a coupling is that, of what material, and how is it made?

A. I don't know what; I guess brass principally or composition of some kind.

X Q. 50. And that enters the end of the pipe, does it?

A. That screws right onto this thread arrangement.

X Q. 51. The thread arrangement?

471 A. Yes, sir; what we call the hose attachment.

X Q. 52. And would the other end of it go into the rubber pipe?

A. No, sir.

X Q. 53. How was it fastened to the rubber pipe?

A. Some are tied on with wire and have different methods of attaching the attachment to the rubber.

X Q. 54. One end of this attachment, then, would go into the end of the rubber hose?

A. One end of it.

X Q. 55. And the other end would be screwed onto the water works department?

A. Yes, sir.

X Q. 56. And then how would the hose be attached to the water works?

A. That is what I have been telling you; by screwing it onto the attachment.

X Q. 57. The attachment of what?

A. The hose attachment.

X Q. 58. Then do I understand you to say there is a ring which connects the coupling that goes into the rubber hose with the bib attachment?

A. Not necessarily a ring.

X Q. 59. How would you connect them together?

A. Screw it onto the attachment and turn it around and keep turning until it was tight.

472 X Q. 60. You would screw the rubber hose in which was inserted this threaded tube onto the bib of the hydrant?

A. Yes, sir.

X Q. 61. That is the way the attachment is formed?

A. Yes, sir.

X Q. 62. And the rubber hose with that threaded hose inside of it would be screwed onto the water works?

A. Yes, sir; I suppose it would, but I don't know.

X Q. 63. So that the inside of the coupling which was inserted in the rubber hose is about the same size as the outside of the bib connected with the water works?

A. About the same size; yes, sir.

Redirect examination by Mr. BENNETT, counsel for the complainant:

Re-D. Q. 64. The diameter of what you call the hose bib—what was that under the regulation?

A. Do you mean the bib that comes from the ground?

Re-D. Q. 65. Yes.

A. The size of the attachment would be three-quarters of an inch.

Re-D. Q. 66. Three-quarters of an inch in diameter?

A. Yes, sir; possibly a trifle less than that; between a half and three-quarters.

Re-D. Q. 67. And that would be the size of the opening into the main water main, would it?

473 A. Not necessarily. The main water pipe might be two inches in diameter, according to the supply at the place.

Re-D. Q. 68. The pipe coming up onto the ground onto the end on which the hose is attached would be three-quarters of an inch in diameter, would they?

A. Yes, sir; between a half and three-quarters of an inch in diameter.

Re-D. Q. 69. Then your regulations prohibit the use of hose in connection with that to exceed three-quarters of an inch in diameter?

A. Yes, sir; it did.

Re-D. Q. 70. That regulation has reference to the diameter of the hose to be used?

A. Yes, sir.

Re-D. Q. 71. I notice in your book here it is stated "one hose bib, one fountain, garden;" both of those were located in the garden, weren't they?

A. Yes, sir; the hose bib and the fountain.

Re-D. Q. 72. And the hose bib was entirely separate from the fountain?

A. Yes, sir.

Re-D. 73. And that was arranged so as not to permit of the use of the hose to exceed three-quarters of an inch in diameter?

A. Well, of course they could have larger hose if they had special permission to use it?

Re-D. Q. 74. Had they no special permission in connection with this property?

474 A. Not to my knowledge.

Re-D. Q. 75. You made a search of that particularly?

A. Yes, sir; I did, and I couldn't find any such thing on the books.

Re-D. Q. 76. In case of a fountain such as Falls Field, was a special permit necessary?

A. They had to make an application to have them connected.

Re-D. Q. 77. Did you find such permit granted in looking over the books?

A. Yes, sir; the permission is granted in such cases to a licensed plumber to do the work on the application of the owner of the property.

Re-D. Q. 78. You always recognize the owner of the property, do you?

A. Yes, sir; we do now.

Re-D. Q. 79. And all permits granted in the name of the owner and not in the name of the lessee?

A. Exactly.

(Signed) FRANK WITHERSPOON.

JOHN F. DORAN, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainants, testified as follows:

Question. 1. What is your name, age, residence, and occupation?

Answer. My name is John F. Doran; 31 years of age; 15 Jay street; plumber.

Q. 2. How long have you been working as a plumber?

475 A. About sixteen years.

Q. 3. Have you at any time done any plumbing work upon the property known as Falls Field, in this city?

A. Yes, sir.

Q. 4. When was it?

A. I am doing it right along; six or seven or eight years ago or six years ago, and doing it to-day.

Q. 5. Was the first plumbing work which you did upon that property done after Mr. John Meinhard moved away?

A. Yes, sir.

Q. 6. How long after he moved away was it that you went to work there?

A. I couldn't exactly say. It was right away after they commenced tearing it down that I went there and he was moved out, but I couldn't say how long it was, though.

Q. 7. You went there to assist in the fixing up of the property, did you?

A. Yes, sir.

Q. 8. As a part of your work upon that property did you have the taking out of the water pipes?

A. Yes, sir.

Q. 9. Did you find upon that property a hydrant connection for hose, what is commonly known as as prinkling hydrant?

A. It is a hose bib; it is for sprinkling purposes.

Q. 10. You found a hose bib for sprinkling purpose there, did you?

476 A. Yes, sir.

Q. 11. More than one?

A. Only one.

Q. 12. Where was that one located?

A. Out in the yard near the fountain.

Q. 13. What was the size of that hose bib?

A. Three-quarters.

Cross-examination by Mr. SULLIVAN, counsel for defendants:

X Q. 14. Did that hose bib have a thread on it?

A. Yes, sir.

X Q. 15. What would be the size of the rubber hose used on such a bib?

A. Three-quarters.

X Q. 16. That is, three-quarters inside?

A. Yes, sir; always measure them on the inside.

X Q. 17. That would be about an inch hose outside, I suppose?

A. Yes, sir; probably would vary some.

X Q. 18. That hose would be generally called an inch hose, would it?

A. No, sir; three-quarters; measure them always on the inside.

X Q. 19. What kind of a coupling did they use for attaching such hose to the water works?

A. Common brass coupling.

X Q. 20. How would they fasten it?

A. Would screw it on with their hands.

477 X Q. 21. In other words, they would put the brass coupling into the rubber hose, and then how were they fastened to the bib?

A. There is a screw on the end of the bib and screw it onto the hose.

X Q. 22. And what kind of an attachment would they use to fasten the bib and the rubber hose together?

A. A regular screw.

X Q. 23. At the outer end of the coupling it would have a loose thimble, would it?

A. Yes, sir.

X Q. 24. And that loose thimble made a connection with the bib?

A. Yes, sir.

X Q. 25. Would the inside of the coupling which went into the hose be the same size in diameter as the bib?

A. Yes, sir.

X Q. 26. What is the thickness of the metal which forms such couplings?

A. For the hose or for the bib?

X Q. 27. For the hose.

A. Probably a sixteenth.

X Q. 28. And what is the length of it?

A. About three inches; it varies some.

(Signed) JOHN F. DORAN.

Recess until 2.30 p. m.

478 2.30 P. M.

JOHN V. ENGLERT, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John V. Englert; age, 34; residence, corner of Clifton and Central avenue; occupation, beer peddler for the Genesee Brewing Company.

Q. 2. How long have you been a beer peddler for the Genesee Brewing Company?

A. Off and on ever since they established, in 1879; eight years.

Q. 3. Do you know John Meinhard, of this city, who formerly kept Falls Field?

A. Yes, sir.

Q. 4. Did you at any time deliver beer at Falls Field while it was kept by John Meinhard?

A. Yes, sir.

Q. 5. For whom were you delivering beer at that time?

A. The Bartholomay Brewing Company?

Q. 6. When did you commence delivering beer at John Meinhard's and how long did you continue?

A. The time we had the races, in 1881, and was there in August and in the months of August and September and October.

Q. 7. For how long did you continue?

A. For some months after that.

Q. 8. When you delivered beer at Meinhard's at what part of the building did you deliver it?

479 A. On the east side, through the trap-door from the outside, on a slide.

Q. 9. On what street was it that you delivered?

A. North St. Paul street.

Q. 10. And did you slide the beer from the street down into the cellar?

A. Yes, sir.

Q. 11. After sliding the beer into the cellar what then did you do?

A. I had to light the gas in the cellar so I could see the box. I lit the gas so I could see from the slide to shift the beer to the south in order to get it to the ice box, towards the southwest corner.

Q. 12. Did you have to put the kegs of beer in the ice box in the cellar?

A. Most every time.

Q. 13. Where was this gas light in the cellar?

A. It was right next to the pipes, the pipes coming down from the box back of the bar.

Q. 14. How many pipes were there coming down from the box back of the bar?

A. Three or four.

Q. 15. And these pipes came right down near the gas light, did they?

A. Yes, sir; right near the gas light.

Q. 16. And where did these pipes go?

A. They made a turn into the wine cellar, and from the wine cellar they went into the ice box.

Q. 17. And after they got into the ice box what then was done with them?

480 A. Then there was a connection with a rubber hose—I couldn't judge how long the hose was, a foot or eighteen inches or two feet—to make the connection with the faucet to the beer keg or barrel.

Q. 18. Was there a rubber connection from the end of each beer-supply pipe to the beer faucet?

A. That is on all the beer faucets; I don't know about the ale. I supposed they used the same.

Q. 19. You say the beer-supply pipes came down from the saloon into the cellar near the gas light; could you see the beer-supply pipes plainly in the cellar?

A. Yes, sir.

Q. 20. Was there any covering of any kind upon these beer-supply pipes?

A. No, sir.

Q. 21. How often per week did you deliver beer at Meinhard's?

A. Two and three times a week.

Q. 22. And on each of these occasions when you would deliver beer and go into the cellar to put it into the ice box would you see these beer-supply pipes coming down from the saloon?

A. I couldn't help but see them because they were right next to the light and I had to see them. They were right next to the gas jet.

Q. 23. Was there ever any covering upon or around these beer-supply pipes?

A. No, sir.

Q. 24. What, if anything, did Mr. Meinhard ever say to you about these beer-supply pipes?

481 A. Well, most every time he came down he would say, "John, look out that you don't shift this jet here on account of these pipes, so you don't burn them." He would say, "Be very careful about these pipes."

Q. 25. Was this a swinging gas bracket?

A. Yes, sir; a swinging gas jet.

Q. 26. And he cautioned you to be careful that this light didn't burn the pipes?

A. Yes, sir.

Q. 27. About what was the size of these beer-supply pipes that came into the cellar?

A. About a half inch; the same as they use all over; I should judge about a half inch.

Q. 28. And did these three or four beer-supply pipes come down into the cellar together?

A. All together; the same as my fingers are here now; they are right down in a bunch.

Q. 29. And so long as you continued delivering beer at Meinhard's were all of these beer-supply pipes always bare?

A. Always.

Cross-examination by Mr. SULLINAN, counsel for the defendants:

X Q. 30. Who are you working for now?

A. Genesee Brewing Company.

X Q. 31. How long have you been working for the Genesee Brewing Company?

A. I have been working for them ever since they started, off and on. I have worked for other breweries since—since 1879.

482 X Q. 32. What did you do for them?

A. I peddled beer.

X Q. 33. That is, you delivered beer to their customers throughout the city?

A. Yes, sir.

X Q. 34. Were you engaged in delivering beer for the Bartholomay Brewing Company in the year 1881?

A. Yes, sir.

X Q. 35. And you delivered some beer at Mr. Meinhard's saloon, on North St. Paul street?

A. Yes, sir.

X Q. 36. Did you place the beer in the lower ice box, in the cellar?

A. Yes, sir.

X Q. 37. But not in the upper ice box?

A. No, sir.

X Q. 38. All your beer was placed in the lower ice box?

A. Yes, sir.

X Q. 39. You would first slide the beer in through a window fronting on North St. Paul street and then go in the cellar and put it in the large ice box, would you?

A. Yes, sir.

X Q. 40. Would any one assist you in doing that?

A. No, sir.

X Q. 41. How many kegs of beer at a time would you generally deliver there?

A. From ten to twenty.

483 X Q. 42. And how often a week would you deliver that quantity of beer?

A. During the week they wouldn't take as much as on Saturday. On Saturday they always would take the larger amount, which any one can tell you. During the week probably from five to six or seven, and on Saturday from ten to twenty.

X Q. 43. They would lay in a large supply on Saturday to furnish the Sunday trade?

A. Yes, sir.

X Q. 44. Mr. Meinhard at this time kept Falls Field garden as well as the saloon?

A. Yes, sir.

X Q. 45. You never worked in Mr. Meinhard's saloon?

A. No, sir.

X Q. 46. You never examined the upper ice box, did you?

A. No, sir; I had no business to.

X Q. 47. You don't know how that was constructed?

A. I do, about. I can just about tell how it was. It is the same as all the rest have, with the faucets on the front.

X Q. 48. You can tell by looking at the outside of it?

A. Yes, sir; that is about all.

X Q. 49. You never examined the inside of it?

A. No, sir.

X Q. 50. So what was inside of the upper ice box you don't know?

A. No, sir.

484 X Q. 51. What was the size of this upper ice box?

A. I couldn't give the exact size. It is the same as all the rest of the saloons have under their bar. I should judge it was about 18 x 24, or something like that.

X Q. 52. Eighteen inches by twenty-four inches?

A. I think so.

X Q. 53. Was it placed under the bar?

A. Right under the counter.

X Q. 54. Right next to the work-board, was it?

A. Yes, sir. There was three or four faucets right on there.

X Q. 55. Three or four faucets fronting it?

A. Yes, sir.

X Q. 56. And it had a loose top to it. If you wanted to look inside all you had to do was to take the top off; all you had to do was to raise it up?

—. ——.

X Q. 57. Did they keep ice in the upper ice box?

A. Yes, sir. I have seen them put in chips of ice.

X Q. 58. Was this upper ice box about the middle of the counter or at one end of it?

A. I couldn't tell you.

X Q. 59. And the bartender drawing the beer—all he had to do was to turn the cock and out would come the beer; is that so?

A. Yes, sir.

485 X Q. 60. You drew out some beer from that apparatus, did you?

A. Yes, sir.

X Q. 61. Who was Mr. Meinhard's bartender at this time?

A. I couldn't tell you. I think it was a fellow named Felix, but I am not sure.

X Q. 62. Was this ice box built right into the counter?

A. Right under the top board.

X Q. 63. The top of the ice box was on a level with the bar?

A. Yes, sir.

X Q. 64. And it formed part of the bar counter, did it?

A. I think there was a piece cut out to form this box. I think there was a piece cut out to get ice and stuff in there.

X Q. 65. That was a piece cut out of the bar counter?

A. Yes, sir; I don't know if it was wood or marble. Some have marble and some wood.

X Q. 66. You don't recollect whether this was marble or wood?

A. No, sir.

X Q. 67. In order to see in this ice box, if you were standing outside of the bar, you would have to leave this cover off and would look into it?

A. Yes, sir.

X Q. 68. Do you recollect which way the bar stood, east and west or north and south?

486 A. It was south. That was on the south side of the room.

X Q. 69. Do you recollect which way the bar counter was, east and west or north and south?

A. It was east and west.

X Q. 70. Then the bartender in drawing a glass of beer would stand facing the counter if he was outside of the counter, would he?

A. He would look to the north.

X Q. 71. And in drawing a glass of beer he would be facing the counter?

A. Yes, sir.

X Q. 72. How many faucets do you say was in this apparatus?

A. Three or four.

X Q. 73. This ice box was straight, like the most of the ice boxes used in saloons that you have seen?

A. I think so—the upper part of it.

X Q. 74. You didn't see the lower part of the ice box?

A. I never looked on the inside.

X Q. 75. You never went behind the bar to examine it, did you?

A. No, sir; I did not.

X Q. 76. Did you see any coils in the bottom of the upper ice box?

Complainant's counsel objected on the ground that the witness has stated that he did not look into the upper ice box and it is unnecessarily consuming time to continue the examination in reference to its contents.

487 A. What was inside of the upper ice box I don't know.

X Q. 77. You never looked into it?

A. No, sir.

X Q. 78. Was there a cupboard in the lower part of this upper ice box?

A. Everything bare; from the ceiling to the faucet everything bare and as bare as this pipe going through here.

X Q. 79. Did this ice box in the saloon which you have testified about have a cupboard below the ice box containing the ice?

A. No, sir.

X Q. 80. Did the ice box run all the way down to the floor of the saloon?

A. No, sir; it run from the top board. There is another shelving where they put the glasses about two feet from the top, and then there is a shelving runs all the way through, and that is all the height that box is, and from there the pipes run through a hole into the cellar.

X Q. 81. This board that you are talking about is what is called the work-board, is it?

A. Yes, sir.

X Q. 82. And is that work-board part of the counter?

A. That is what they use for cleaning their glasses and so and mixing up drinks and all such things.

X Q. 83. This work-board which you refer to has a water tank, has it not?

A. Yes, sir.

488 X Q. 84. And this water tank was alongside of this ice box?

A. Yes, sir.

X Q. 85. What was the size of this ice box in the cellar?

A. You have got me there; I don't know. It was a big one.

X Q. 86. How large should you say?

A. As big as a bed-room.

X Q. 87. How many feet east and west was it?

A. I couldn't say; I don't remember. It was, anyway, about 10 x 15 or something like that. I wouldn't say a word about how big the ice box was.

X Q. 88. Did it run to the ceiling of the saloon floor?

A. The ice boxes are fixed so that when you are inside—they have them packed, and when you are inside of the box you don't know how high it is and whether it goes up to the ceiling or not.

X Q. 89. Was this ice box down cellar lined?

A. Yes, sir.

X Q. 90. What was it lined with?

A. Oh, same as any floor.

X Q. 91. Was it lined with sheet iron?

A. That is something I couldn't remember.

X Q. 92. What kind of a bottom did this lower ice box have?

A. It must have been the same as a floor.

X Q. 93. You didn't take particular notice of that?

489 A. No, sir.

X Q. 94. Do you know if this ice box was lined with any kind of metal?

A. I don't; I think not.

X Q. 95. Did you notice an air reservoir in this lower ice box?

A. No, sir.

X Q. 96. Did you notice an air pipe coming into the lower ice box?

A. No, sir.

X Q. 97. How was the beer forced out of the lower ice box up into the saloon?

A. The pipes that led from the top from those faucets led down to the beer keg; then they would force the air with these hydraulic pumps and force the air into the pipes, and that forces the beer up.

X Q. 98. Did you see that pump that conveyed the air from the lower ice box?

A. I don't remember, but all I know is that they had that vented in order to run up the beer.

X Q. 99. What was the size of those beer-supply pipes which ran from the upper to the lower ice box?

A. About half an inch.

X Q. 100. Were they lined?

A. What do you mean?

X Q. 101. Were they lined pipes?

A. They were common, ordinary lead pipes.

X Q. 102. Not lined, then?

A. There was a bare pipe; I don't know what metal it is, whether lead or zinc or what it is.

490 X Q. 103. Were they lined or not lined pipes?

A. That is a question I can't answer. I don't know what you mean by lined or not lined.

X Q. 104. How many kegs were kept tapped in this lower ice box?

A. Generally two.

X Q. 105. Did they have ale in the lower ice box as well as lager beer?

A. Yes, sir.

X Q. 106. How many kegs of ale did they have—do you know?

A. I couldn't say.

X Q. 107. Was the ale tapped in the same way as the lager beer?

A. Yes, sir.

X Q. 108. What was the size of the hole in the lower ice box through which these beer-supply pipes ran?

A. About four inches; all coming through at once.

X Q. 109. Was it a round hole?

A. I don't know; it was a hole big enough for the pipes to go through.

X Q. 110. How near the top of the box was this hole?

A. It was about half way, I should say.

X Q. 111. How near the top of the ice box was this hole?

A. About half way, I think.

X Q. 112. What was the length of the supply pipes from the upper to the lower ice box?

491 A. From the top to the bottom?

X Q. 113. Yes.

A. Do you mean from the upper box to the lower box?

X Q. 114. Yes.

A. About twelve feet, if not longer. Ten or twelve feet.

X Q. 115. And how much of that could be seen in the lower ice box?

A. Just as many as there was outside—three or four.

X Q. 116. What length of each pipe could be seen in the lower ice box?

A. About four feet, easy, if not more.

X Q. 117. How much more?

A. I would say about four feet.

X Q. 118. And what was the length of this rubber hose?

A. From a foot to 18 or 20 inches, or something like that; just enough to make a connection back and forth, and some longer and some shorter. If you want to tap a keg of beer back there you have got to have a longer pipe than if you tap one here, if it comes down here.

X Q. 119. Which way did these kegs lie in the upper ice box?

A. Wherever the bartender put them. You could place them anywhere to tap them.

X Q. 120. There was no particular place for them, then?

A. No, sir; you could shove them anywhere and block them up.

492 X Q. 121. In other words, when they tap a keg of beer they would place it on its side and block it up with little supports?

A. Yes, sir; that is it.

X Q. 122. That was done for the purpose of preventing them from rolling, I suppose?

A. That is it.

X Q. 123. How many kegs did you see blocked up in that way?

A. They never blocked up more than they tapped.

X Q. 124. How many did you see on tap as a general thing?

A. Generally two.

X Q. 125. As fast as they wanted to tap a keg they would lay it on its side and block it up?

A. When they would think one is very near empty they would tap another.

X Q. 126. The kegs would lie on the bottom of the ice box, would they?

A. Yes, sir.

X Q. 127. Would those kegs rest at one side of the box or in the middle of the box?

A. Just as they were placed.

X Q. 128. Just as a matter of convenience for the bartender?

A. Yes, sir.

X Q. 129. There was no particular place for them?

A. No, sir.

493 X Q. 130. And your duty in the cellar was simply to roll the beer kegs into the large ice box?

A. That was all.

X Q. 131. You wouldn't take any particular pains about placing them there?

A. No, sir.

X Q. 132. Was there ice kept in the lower ice box?

A. Yes, sir.

X Q. 133. Whereabouts in the lower ice box was the ice kept?

A. They had an extra place for that; kind o' rack.

X Q. 134. A rack outside the box?

A. I don't know which side of the box the rack was now. It was, anyway, a rack where the ice was in.

X Q. 135. It was separate from the ice box itself?
A. It was separate from the beer altogether.
X Q. 136. You didn't deliver any ice there, did you?
A. No, sir.
X Q. 137. Who delivered the ice, if any one?
A. I couldn't tell you.
X Q. 138. Did they keep a quantity of ice stored there as a general thing?
A. That is something I never meddled with; I don't know.
X Q. 139. All you know about the ice is that you saw it?
494 A. I saw it in there in a rack.
X Q. 140. That rack had a separate door to get into from the ice box, did it?
A. They came in from the outside.
X Q. 141. And if you wanted to get any ice out of this rack you would not have to go into the large ice box?
A. No, sir.
X Q. 142. It had a separate door of its own, did it?
A. Unless they had an extra door inside, and that I don't know.
X Q. 143. In getting ice out of this rack it wasn't necessary to go into the large ice box?
A. No, sir; there was an outside entrance.
X Q. 144. Which side of this large ice box was this ice kept?
A. I think on the west side.
X Q. 145. You think it was on the east or west side, do you?
A. No, sir; I think it was on the west side, but I ain't sure.
X Q. 146. And you think it was built right up against the ice box, was it?
A. The way they have the ice boxes is, they have——
X Q. 147. I am speaking about this particular one; do you think the ice rack was built right up against the ice box?
A. It is something I won't say, for I don't know.
X Q. 148. Don't know how it was constructed?
495 A. No, sir; I don't know anything about the ice affair at all.
X Q. 149. How deep was this large ice box?
A. It was high enough for me to walk in, anyway.
X Q. 150. That was the height of it. How deep was it?
A. Do you mean the length? From ten to fifteen feet.
X Q. 151. And was it built about the middle of the cellar or at one end of it?
A. It was built towards the southwest corner of the cellar.
X Q. 152. How far from the corner was it built?
A. I think there was a passage-way through there.
X Q. 153. Did the ice box extend too near the east wall of the cellar?
A. No, sir; there is a wine-room there.
X Q. 154. There was a wine-room between the east wall and the ice box?
A. Yes, sir.
X Q. 155. How long east and west was this wine-room?

A. The wine-room went from the ice box to the east wall.

X Q. 156. Were the beer-supply pipes in the lower ice box supported in any way?

A. Everything bare.

X Q. 157. They didn't rest on anything, did they?

496 A. No, sir; only supported, that is, probably, with a staple or something of that kind.

X Q. 158. Did you notice how the beer-supply pipes were fastened to the ceiling of the saloon floor?

A. No, sir; they come right through a hole.

X Q. 159. Come straight down, did they?

A. Yes, sir; right straight down.

X Q. 160. After coming through the floor what direction did they take—east and west or north and south.

A. They went west through the wine cellar into the ice box.

X Q. 161. How many feet west did they go?

A. I give it up; I don't know.

X Q. 162. Did they run along the ceiling and in the floor?

A. They came down and made a kind of a bend and went into the wine cellar and into the ice box, and that is about the only definition I can give you.

X Q. 163. What was the size of these supply pipes did you say?

A. About half an inch.

X Q. 164. And what was the size of the hole in the upper ice box through which each supply pipe went?

A. They all came through together—through about a three or four inch hole.

X Q. 165. Did the air pipe come through the same hole?

A. That is altogether different.

497 X Q. 166. That had a different hole, did it?

A. The air pipe, that has got nothing to do with the beer pipes, because that runs from the pump into the box.

X Q. 167. Whereabouts in the floor did that come through?

A. I don't know.

X Q. 168. You didn't notice that?

A. I never noticed that; they might have had the pump in the cellar and then it wouldn't come through there.

X Q. 169. You don't know but they did have it in the cellar?

A. I don't know.

X Q. 170. You didn't notice that?

A. No, sir; I might have seen it, but I don't remember now.

X Q. 171. You are the John V. Englert who made the affidavit in November, 1885, to be used on a motion for a rehearing in the case of Michael Magin against McKay and others, are you not?

A. I am the man.

X Q. 172. Who asked you to make that affidavit?

A. I was asked by a lawyer.

X Q. 173. What lawyer?

A. Cronise.

X Q. 174. Did you have a talk with Mr. Schantz about making that affidavit?

A. Never.

498 X Q. 175. Do you know Mr. Otto Schantz?

A. I haven't seen him in two years until yesterday when he came up here, and haven't spoken to him.

X Q. 176. Where did you see him yesterday?

A. He came to this office just as I went out; he came in with Mr. Magin.

X Q. 177. Did he ever speak to you about this Meinhard apparatus?

A. Never.

X Q. 178. How long have you known Otto Schantz?

A. I have known him for the last ten years, I think.

X Q. 179. What has been his business?

A. I couldn't say.

X Q. 180. Do you know that he was a bartender in Rochester?

A. Yes, sir; I do. I know the time he worked for Martin Reed, or I think he did.

X Q. 181. How long ago was that?

A. When he kept the Reed house, on Mill St.

X Q. 182. And where else did you know him?

A. Otherwise I have never associated with him and I only knew him by sight. I know the time he came back; he was in California and I know the time he came back.

X Q. 183. Where else did he work besides Martin Reed's, to your knowledge?

A. I don't know.

X Q. 184. Do you know of his working at Mr. Meinhard's?

499 A. I couldn't say whether he worked there or not.

X Q. 185. Who asked you to come to Mr. Cronise's to make this affidavit?

A. I was subpœnaed to go there.

X Q. 186. By whom?

A. I couldn't say.

X Q. 187. Did Mr. Magin ask you to go there?

A. No, sir.

X Q. 188. Who did you go there with?

A. I went there alone. I had a subpœna to go there, and I don't know who sent me the subpœna.

X Q. 189. Did you go there more than once?

A. I went there twice. One time Mr. Cronise wasn't there, so I went there the next day.

X Q. 190. Were you paid for your time?

A. I was paid for my subpœna.

X Q. 191. How much was that?

A. I don't know. I don't remember whether it was half a dollar or what it was.

X Q. 192. Who subpœnaed you?

A. I couldn't say.

X Q. 193. Where were you subpœnaed?

A. It was on St. Paul street, on the street, and I forget who it was.

X Q. 194. Anybody with you when you were subpœnaed?

A. No, sir.

X Q. 195. And you don't know who subpœnaed you?

500 A. Yes; it was my brother, George Englert.

X Q. 196. It was your brother who subpœnaed you?

A. Yes, sir.

X Q. 197. Did he give you the subpœna?

A. Yes, sir.

X Q. 198. A ticket.

A. A written notice.

X Q. 199. Who was it signed by?

A. Signed by a lawyer.

X Q. 200. And at the same time he gave you half a dollar, did he?

A. I was paid the same afternoon for my trouble.

X Q. 201. By whom?

A. By Mr. Magin.

X Q. 202. What did he pay you?

A. I don't remember.

X Q. 203. Where did he pay you?

A. He paid me right in the lawyer's office—Cronise's.

X Q. 204. You went there with Mr. Magin, did you?

A. No, sir; I was there before he was. I never walked with him at all on the street whatever.

X Q. 205. You have been in his place of business, have you?

A. I did while I was peddling for the Bartholomay Brewing Company, but not for the last three or four years.

X Q. 206. What year was that?

501 A. That was 1881.

X Q. 207. You were in there quite often during that time, weren't you?

A. I used to be in there.

X Q. 208. How often were you in there during that time?

A. About three or four times a week.

X Q. 209. So you knew Mr. Magin very well, did you not?

A. I knew him before he had a saloon.

X Q. 210. And you have also known him since he kept a saloon?

A. Yes, sir.

X Q. 211. When did he first speak to you about this Meinhard apparatus?

A. About two years ago, when we were over at Mr. Cronise's office.

X Q. 212. Didn't he speak to you about this Meinhard apparatus before you went to Cronise's?

A. No, sir; he did not.

X Q. 213. Who first spoke to you about the Meinhard apparatus?

A. My brother.

X Q. 214. George J. Englert?

A. Yes, sir.

X Q. 215. He is the young man who worked for Mr. Meinhard, is he?

A. Yes, sir.

X Q. 216. What was the height of this wine cellar in Meinhard's cellar?

502 A. The height of it is just the height of the ceiling.

X Q. 217. It ran to the ceiling, did it not?

A. Yes, sir.

X Q. 218. And it was the same height as the ice box?

A. No, sir; it is higher than the ice box.

X Q. 219. The ice box didn't run to the top, then?

A. No, sir; it can't, because the ice box is lined, understand, and it is all doubled all the way round and packed with sawdust or charcoal.

X Q. 220. Then how near the ceiling did this ice box go?

A. As high as the joist.

X Q. 221. Up to the joists?

A. Up to the joists.

X Q. 222. What was the depth of this joist?

A. They generally have from a foot to fourteen inches, but I don't know.

X Q. 223. What was the depth of the joists in this cellar of Mr. Meinhard's?

A. They same; they always have them alike—about 12 to 14 inches.

X Q. 224. Did these beer-supply pipes run between the joists?

A. Yes, sir; went between the joists.

X Q. 225. Which way did the joists run?

A. I couldn't say.

X Q. 226. East and west or north and south?

503 A. I don't know.

X Q. 227. Did this wine-room have a door to it?

A. Yes, sir.

X Q. 228. Whereabouts was the door?

A. I think it was about half way—about the middle of it.

X Q. 229. What was the size of the door?

A. I couldn't tell you. I never had any dealings with that cellar, so I don't know anything about it.

X Q. 230. You never had much to do with the cellar?

A. Nothing with the wine cellar, and all I had to do was to put down my beer and put it in the ice box.

X Q. 231. And you got out of the cellar as quickly as you could, I suppose?

A. I would turn out the gas, and that is all I would do.

X Q. 232. Generally in a hurry when you went in the cellar?

A. No, sir; I took my time to do my business right.

X Q. 233. Did the large ice box have a door to it?

A. Yes, sir.

X Q. 234. Did this door have a knob on it or a thumb latch?

A. It had one of these patent catches that runs over, kind o' a bar like.

504 X Q. 235. A clasp?

A. I don't know what you would call it.

X Q. 236. Did you notice a lighted candle that was kept in the cellar?

A. I did.

X Q. 237. Whereabouts was that kept?

A. That was all over; not lit.

X Q. 238. It wasn't lit?

A. They used to have a candle there, and if wanted to get up a case of wine, or something like that, so they could use it, and they couldn't see by the gas.

X Q. 239. Did you notice the gas burner that was inside of this room?

A. Yes, sir.

X Q. 240. How near the ceiling was this gas burner?

A. It was about three feet from the ceiling, down just enough so you could light it and handle it easily.

X Q. 241. Was it east or west of the door in the wine-room?

A. It was east—east of the pipes leading down.

X Q. 242. In opening the wine-room door did it open to the west?

A. I never opened it, so I don't know.

X Q. 243. How far east of the wine-room door was this gas jet?

Complainant's counsel objected for the reason that the wit-
505 ness had not said that it was east of the wine-room door, and he said it was east of the pipes coming down.

A. That is right east of the pipes coming down.

X Q. 244. Was this gas jet east or west of the wine-room door?

A. The gas jet was west of the wine-room door.

X Q. 245. How far west of the wine-room door was it?

A. I don't know.

X Q. 246. About how far?

A. I couldn't tell you.

X Q. 247. Was this lower ice box filled?

A. Filled with what?

X Q. 248. Was it lined in any way?

A. Yes, sir.

X Q. 249. What was it lined with?

A. I couldn't tell you; I didn't make it.

X Q. 250. You never looked inside to see what it was lined with, did you?

A. No, sir. How could you see when it was all sheeted up?

X Q. 251. Sheeted with what?

A. With boards.

X Q. 252. It wasn't zinc lined, then?

A. No, sir.

X Q. 253. Did it have a zinc bottom to it?

A. I couldn't say.

506 X Q. 254. Was it filled with sawdust?

Complainant's counsel objected for the reason that the witness has stated that he did not know what it was made of.

A. It was sheeted up, and how do I know?

X Q. 255. You don't know, then, whether it was filled up or not?

A. No, sir; I do not.

X Q. 256. Who else besides Mr. Cronise have you talked to about this Meinhard apparatus?

A. No one at all.

X Q. 257. Haven't you talked with Mr. Bennett, the lawyer, about it?

A. I did not.

X Q. 258. Did you talk with Mr. Gordon about it?

A. No, sir.

X Q. 259. Have you talked with your brother about it?

A. No, sir.

X Q. 260. Never said anything to him about the Meinhard apparatus?

A. No, sir; we ain't friends.

X Q. 261. How often have you spoken with Mr. Magin about it?

A. I spoke to him about it two years ago, and I spoke to him again yesterday or to-day and not since.

X Q. 262. Did he show you this model here of the Meinhard apparatus?

A. No, sir.

507 X Q. 263. When did you see that?

A. I saw that two years ago; I thought it wasn't as big as that, but they say it was the same one that was over at Cronise's, but that is the first time I have seen it since.

X Q. 264. Who told you it was the same that was over there?

A. It was mentioned here to-day.

X Q. 265. By whom?

A. By somebody, but I never looked at it.

X Q. 266. You think the model which you saw over there wasn't as large as this?

A. I thought it wasn't, but they say it is.

X Q. 267. Did you tell them you thought it wasn't as large as that?

A. I didn't remember that being the same thing what I saw before.

X Q. 268. And you told them so?

A. But it is all the same.

X Q. 269. Who told you it was?

A. My own—can't I see that myself?

X Q. 270. Did you not state a few minutes ago——

A. I thought it was not as big as it is.

X Q. 271. You said somebody said it was. Who told you before?

A. They said that was the same model that was over there before.

X Q. 272. Who told you that?

A. I don't know; some person said so.

508 X Q. 273. Somebody in this room?

A. I forget who it was, but I think it was this gentleman here (Mr. Bennett).

X Q. 274. And that was before you was sworn as a witness in this case?

A. No; I will tell you. He says, "Do you remember seeing the sketch of the cellar?" or something like that, and I says, "Yes," and he says, "Is this about the shape of it?" and that is all.

X Q. 275. You had seen a sketch of the cellar, had you?

A. When I was down in the cellar three or four times a week I ought to see the sketch of it, but I never studied it on that machinery there.

X Q. 276. How far was it from where the pipes came through the cellar floor until they entered the lower ice box?

A. About ten or twelve feet.

X Q. 277. How many feet of the supply pipes were in the lower ice box?

Objected to, as the witness has been asked and has answered that question.

A. I can say the same as I did before. If a keg of beer is tapped here and a pipe comes in it takes a shorter pipe from here than it does to the door, and common sense will teach that.

X Q. 278. And the length of the pipes, then, would depend somewhat on the location of the beer kegs?

A. Yes, sir; the longest pipe goes to the furtherest barrel.

509 X Q. 279. Did Mr. Magin tell you that Mr. Meinhard claimed that the beer-supply pipes had a rubber pipe over them?

A. Mr. Magin never spoke them words to me.

X Q. 280. Did he ever speak to you about the rubber pipes that were over the beer-supply pipes in the Meinhard apparatus?

A. No, sir; he never mentioned anything about Mr. Meinhard to me.

X Q. 281. Didn't he ask you if you knew anything about the Meinhard apparatus?

A. No.

X Q. 282. How many talks did he have with you about the Meinhard apparatus?

A. He didn't have no talk with me at all; not about this business at all.

X Q. 283. What was he talking about?

A. Only I told him or asked him whether he wanted any beer, and he would say aye, yes, or no.

X Q. 284. But he never spoke about the Meinhard apparatus to you?

A. No, sir.

X Q. 285. And the only person who spoke to you about the Meinhard apparatus was your brother?

A. Yes, sir.

X Q. 286. And that was when he subpœnaed you?

A. He says, "John, I have got a subpœna for you;" and I says, "What for?" and he says, "About Meinhard's ice box," and that was the long and short of it.

510 X Q. 287. And that was all that was said, was it?

A. Yes, sir.

X Q. 288. Did he tell you where to go?

A. It said right on it to call at Powers' block, such and such a number.

X Q. 289. And you went there and met Mr. Magin?

A. Mr. Magin wasn't there at all.

X Q. 290. Didn't he come there before you left?

A. He came there; yes, sir.

X Q. 291. Didn't you know Mr. Magin was coming?

A. I did not. I was sworn and gave my statement, and after that I don't know what he gave me—a dollar or something—and he says, "Here, for your trouble."

X Q. 292. Don't you recollect having a talk with Mr. Otto Schantz out on Bay street some time ago?

A. No, sir.

X Q. 293. Didn't Mr. Otto Schantz meet you out there one day and talk with you about this apparatus?

A. No, sir.

X Q. 294. Did you live out that way?

A. No, sir.

X Q. 295. Where do you live?

A. Central avenue.

511 X Q. 296. If you had such a talk with Mr. Otto Schantz you would remember it, would you?

A. I think so; I ought to.

X Q. 297. While you were delivering beer for the Bartholomay Brewing Company how many saloons were you in the habit of furnishing?

A. I couldn't say how many we had at that time. I have got 117 at present and I have got to see about four yet this afternoon.

X Q. 298. Did you have as many to supply when you worked for Mr. Bartholomay as you have now?

A. About.

X Q. 299. Would you have to see all of those in one day?

A. Yes, sir.

X Q. 300. So you didn't have very much time to spend at each one, did you?

A. That is a different thing. We would divide up the routes and one day I would take this route and to-morrow another. I don't have to go every place every day and would supply them for two or three days.

X Q. 301. You supplied as many each day as you could conveniently get around to?

A. Yes, sir.

X Q. 302. Do you recollect how many you had supplied during that time?

A. I do not.

X Q. 303. Did any person travel with you at the time?

A. If I had a big load I always had a helper.

512 Redirect examination by Mr. BENNETT, counse- for the complainant:

Re-D. Q. 304. Did you ever work for Mr. Meinhard?
A. Never.
Re-D. Q. 305. Never tended bar for him?
A. No, sir.
Re-D. Q. 306. Or had anything to do with his saloon?
A. No, sir; nothing at all.
Re-D. Q. 307. Your business, so far as related to Mr. Meinhard, was the delivery of beer there and putting it in the lower ice box, wasn't it?
A. Yes, sir.
Re-D. Q. 308. Did you have anything to do with putting the ice in or taking it out of the lower ice box?
A. No, sir; had nothing to do with the ice whatever.
Re-D. Q. 309. Did you have anything to do with the tapping of the kegs of beer?
A. No, sir.
Re-D. Q. 310. Did you have anything to do with setting the keg of beer in the place for tapping?
A. No, sir.
Re-D. Q. 311. That was all attended to by Mr. Meinhard's men, was it?
A. Yes, sir.

513 Re-D Q. 312. So you had no occasion to inquire into the way in which the beer was tapped and arranged and what was done with the putting in and taking out of the ice?
A. No, sir; had nothing to do only to put the beer in the box. That is always required.
Re-D. Q. 313. You have stated, haven't you, that the beer-supply pipes entered the lower ice box at the side next to the wine cellar?
A. Yes, sir.
Re-D. Q. 314. The beer-supply pipes came through the floor and then branched off through the wine cellar and into the side of the ice box?
A. Yes, sir; that is right.
Re-D. Q. 315. Next to the wine cellar, then, was the ice box?
A. Yes, sir.
Re-D. Q. 316. And was the ice box in the corner from the wine cellar?
A. In the southwest corner.
Re-D. Q. 317. In the southwest corner of the cellar?
A. Yes, sir.
Re-D. Q. 318. And running off from the wine cellar?
A. Yes, sir.
Re-D. Q. 319. There was a passage-way, wasn't there, along in front of the wine cellar and the ice box?
A. Yes, sir.
Re-D. Q. 320. And it was through that passage-way that you had to pass to deliver your beer into the ice box?

514 A. Yes, sir.

Re-D. Q. 321. And the gas jet was in that passage-way, wasn't it?

A. Yes, sir; in that passage-way, right where the pipes come down.

Re-D. Q. 322. And when the gas-light was turned up could you plainly see these pipes?

A. The pipes came down the same as this gas pipe, and if this business was turned over here it would melt the pipes.

Re-D. Q. 323. If the gas bracket was turned over towards the beer-supply pipes it would have melted the pipes, would it?

A. Yes, sir; and I was cautioned most every time I went down there to look out for the light.

Re-D. Q. 324. Who cautioned you?

A. Mr. Meinhard himself.

Re-D. Q. 325. Then when the gas-light was turned up you could always see these bare-supply pipes, could you?

A. Right by the side of the light.

Re-D. Q. 326. You could see how these beer-supply pipes came through the floor, could you?

A. Yes, sir.

Re-D. Q. 327. But you couldn't see how the beer-supply pipes came through the bottom of the upper ice box, could you?

A. No, sir.

Re-D. Q. 328. You don't know how they came through that?

A. I couldn't say.

515 Re-D. Q. 329. Do you know anything about the internal arrangement of the upper ice box?

A. I do not.

Re-D. Q. 330. Were you ever called upon to operate this upper ice box?

A. No, sir.

Re-D. Q. 331. Nor put any ice in it?

A. No, sir.

Re-D. Q. 332. Never looked into it?

A. No, sir.

Re-D. Q. 333. This upper ice box was in his saloon, where you had no occasion to go to attend to your business?

A. Yes, sir.

Re-D. Q. 334. Speaking of the exact location of the upper ice box, was it under the bar or back of the bar?

A. It was right under. They have a black walnut top, and right under that top is where the ice box is.

Re-D. Q. 335. And that is the ice box that you never examined or looked into?

A. I never looked into it, and all I see was where they drew the beer from the faucets.

Re-D. Q. 336. You could simply see them drawing beer from the faucets?

A. Yes, sir.

Re-D. Q. 337. You stated in reply to a cross-question that every-

thing was bare from the floor to the faucet; did you there refer to the cellar floor, to the faucets in the lower ice box?

516 A. I mean from the floor or ceiling down to the tap.

Re-D. Q. 338. From the ceiling of the cellar down to the tap all the beer-supply pipes were bare?

A. Yes, sir; were bare.

Re-D. Q. 339. I believe you to have stated that you never operated this beer apparatus in the saloon?

A. No, sir.

Re-D. Q. 340. Do you recognize this model which is marked "model Meinhard apparatus" as the model which you saw at Mr. Cronise's office about two years ago?

A. Just as I stated before. I thought it wasn't as big as that, but then I see it now.

Re-D. Q 341. You do recognize it now, do you?

A. Yes, sir.

Re-D. Q. 342. And this is a correct model showing the internal arrangement of Meinhard's cellar as you remember it?

A. Yes, sir; there is the ice box under the counter (pointing to the ice box named "C"). There is the lower ice box. There is the stairway coming down here somewhere, and here—that is the wine-cellar.

Re-D. Q. 343. Let me call your attention to this little brass bracket and ask you if that correctly represents the location of the gas jet in the cellar.

A. That is it exactly. You see there is the gas jet, and if that was shifted over it would melt that pipe, and that is where I was always cautioned.

517 Re-D. Q. 344. Then this little brass bracket correctly represents the location of the gas jet and these wires correctly represent the location and course of the beer-supply pipes?

A. Yes, sir; that is right, and that is very true.

Re-D. Q. 345. And this model is similar to or the exact model which you saw at Mr. Cronise's office, isn't it?

A. That is the one.

Re-D. Q. 346. And when you were at Mr. Cronise's, about two years ago, you identified that model, didn't you?

A. Yes, sir; I did.

Re-D. Q. 347. Let me call your attention to the model marked "Defendants' Exhibit Meinhard Apparatus Model," and ask you whether there was any rubber pipes situated as this model shows the beer-supply pipes at Meinhard's.

A. Never. They were bare.

Re-D. Q. 348. You say you were at Mr. Cronise's on two occasions. Since being at Mr. Cronise's on those two occasions have you read or had read to you copies of the affidavits which you gave then?

A. No, sir.

Re-D. Q. 349. Now, Mr. Englert, will you read both of these papers which I show you and state if you find them to be copies of the affidavits which you made at Mr. Cronise's office?

A. Yes, sir.

Complainant's counsel offers in evidence the two copies of the last witness' affidavits identified by him.

518 Defendants' counsel objected as immaterial, but not upon the ground that they are copies.

Marked "Complainant's Exhibits J. V. Englert's Affidavits Nos. 1 and 2."

J. V. ENGLERT.

HENRY BARTHOLOMAY, sworn, in answer to interrogatories proposed to him by Mr. BENNETT, counsel for the complainant, testified as fol-ows:

Question 1. What is your name, residence, and occupation?

Answer. My name is Henry Bartholomay; age, 59; residence, 479 North St. Paul street; occupation, brewer.

Q. 2. Are you the president of the Bartholomay Brewing Company of the City of Rochester?

A. Yes, sir.

Q. 3. You may state whether or not the company of which you are president is the largest brewing company in the city of Rochester.

A. I should think so.

Q. 4. Do you regard your company as the largest brewing company in western New York?

A. I think so.

Q. 5. How long have you been engaged in the brewing business in the city of Rochester?

A. Thirty-five years.

Q. 6. And during all that time you have had an extensive city trade?

A. Yes, sir; mostly from the beginning.

Q. 7. Do you know Mr. Michael Magin, the complainant in these cases?

519 A. Yes, sir.

Q. 8. Do you know one John Meinhard, of Rochester, who was formerly the proprietor of Falls Field, in this city?

A. Yes, sir.

Q. 9. During the time that Mr. Meinhard was the proprietor of Falls Field were you in the habit of visiting his place?

A. Yes, sir.

Q. 10. How frequently would you say you were there during the years 1877, 1878, 1879, and 1880?

A. Very irregular.

Q. 11. Was it your practice to stop in there at irregular intervals during those years?

A. It wasn't my practice, but I stopped there just as I would feel to stop or not.

Q. 12. During those years was Meinhard a customer of yours?

A. I guess so.

Q. 13. Mr. Bartholomay, do you know of Mr. Meinhard having

in his saloon at Falls Field a beer cooling and drawing apparatus in the years 1877, 1878, 1879, and 1880?

A. Yes, sir; I recollect that.

Q. 14. Mr. Meinhard when examined as a witness in these cases testified that he put certain coils in the upper ice box in his saloon upon your advice; is that so?

A. I guess that is a mistake.

Q. 15. Did you ever request or advise Mr. Meinhard during the time he was proprietor of Falls Field to put coils in his upper ice box?

520 A. I did not, sir.

Q. 16. During the time that Mr. Meinhard was proprietor of Falls Field what was your opinion as regards to the value of coils in beer-drawing apparatuses?

A. By my recollection I was always opposed to it.

Q. 17. You were always opposed to it?

A. Yes, sir.

Q. 18. Did you know of Mr. Meinhard having coils in his beer-drawing apparatus?

A. I never looked at them and I didn't know.

Q. 19. You knew nothing about it?

A. No, sir.

Q. 20. So far as you know, Mr. Bartholomay, did Mr. Meinhard have in his beer drawing and cooling apparatus any water or air passage from the upper to the lower ice box?

A. I don't know anything about that.

Q. 21. You know nothing whatever about his beer-drawing apparatus?

A. No, sir.

Q. 22. Did you ever advise Mr. Meinhard certain changes in his beer drawing and cooling apparatus?

A. I don't know. I think I might advised Mr. Meinhard, you know, to put down a straight pipe as short a distance as he could and a short connection.

Q. 23. If you ever did advise him anything you advised him to put in straight pipe and not coils. Is that it?

521 A. Yes, sir; the meaning of it.

Q. 24. During the time that Mr. Meinhard kept Falls Field did you ever hear, either from Mr. Meinhard or any one else, that he had a beer drawing and cooling apparatus with a water or air passage from the upper to the lower ice box?

A. I did not, sir.

Q. 25. Having stated that you are acquainted with Mr. Magin, let me ask you if you ever visited his saloon and was there shown a beer drawing and cooling apparatus which he stated was the invention of Mr. Gordon, of this city?

A. I guess so. I did.

Q. 26. When Mr. Magin showed you the beer cooling and drawing apparatus at his saloon, which he stated was the invention of Mr. Gordon, did you examine it?

A. I don't recollect that. I don't recollect that I did examine it, but I think Mr. Magin showed me.

Q. 27. You think Mr. Magin explained the whole matter to you, do you?

A. Yes, sir; I think so.

Q. 28. And prior to seeing this beer cooling and drawing apparatus at Mr. Magin's saloon, and which he informed you was the invention of Mr. Gordon, had you ever seen such a beer cooling and drawing apparatus before in your life?

A. I did not, sir.

Q. 29. That was the first time you had ever seen such a construction and arrangement of a beer cooling and drawing apparatus?

A. With that hollow pipe, no, sir; I had not.

522 Q. 30. And by hollow pipe you mean the hollow pipe between the upper and lower ice box, do you?

A. I mean the pipe where another pipe runs in it.

Q. 31. That is a larger pipe surrounding the beer-supply pipes from the upper to the lower ice box?

A. Yes, sir.

Q. 32. And this larger pipe was intended as a water and air passage-way from upper to the lower ice box?

A. I should think it was intended for cooling the pipes inside.

Q. 33. For cooling the beer-supply pipes?

A. Yes, sir.

Q. 34. And before seeing that apparatus of Mr. Magin's you never had seen such an apparatus anywhere else?

A. No, sir; I had not.

Q. 35. Nor had you heard of a similar apparatus?

A. No, sir; I had not.

Q. 36. Did the Bartholomay Brewing Company sign a testimonial for Mr. Magin setting forth the virtues of his beer cooling and drawing apparatus?

A. I don't recollect.

Q. 37. Let me show you this testimonial which is printed on the back of a circular and ask if you signed that for Mr. Magin on behalf of the Bartholomay Brewing Company.

523 Defendants' counsel objected upon the ground that the circular is nothing but a printed circular and of which I suppose hundreds of them were printed by Mr. Magin.

A. We might sign that, but I don't recollect. I would sign it, anyway, if it was brought to me.

Q. 38. You would sign such a testimonial if it was brought to you?

A. Yes, sir.

Q. 39. And such a testimonial in your name sets correctly forth the true state of affairs?

A. Yes, sir.

The circular referred to is the circular heretofore offered in evidence and marked.

Cross-examination by Mr. SULLIVAN, counsel for the defendants:

X Q. 40. How long have you known Mr. Meinhard?

A. I think I have known him about fifteen years.

X Q. 41. Did you first become acquainted with him when he took charge of Falls Field, in this city?

A. I don't recollect. I might have seen him before that, but I don't recollect.

X Q. 42. You have known him, however, since he had charge of Falls Field, in this city?

A. Yes, sir.

X Q. 43. While Mr. Meinhard kept Falls Field he did quite an extensive business there, did he not?

524 A. Pretty fair; yes, sir.

X Q. 44. Didn't he do the largest saloon busi- in the city during that time?

A. I can't say that; I guess not.

X Q. 45. Wasn't Falls Field a very popular place about the time Mr. Meinhard had charge of it?

A. It used to be a popular place on Sundays, but week days I don't think he done much business.

X Q. 46. He didn't do as much business on week days as on Sundays?

A. No, sir.

X Q. 47. Was Mr. Gilbert his partner at that time?

A. That is my recollection.

X Q. 48. The firm was Gilbert & Meinhard?

A. Yes, sir.

X Q. 49. And Mr. Meinhard had charge of the business?

A. I guess both were in business.

X Q. 50. Mr. Gilbert didn't look after the business very much, did he?

A. I don't know. I can't tell.

X Q. 51. Don't you know that Mr. Meinhard was the principal man about the place?

A. He was the principal man.

X Q. 52. Whenever anything was to be done about the place Mr. Meinhard saw to its doing?

A. I guess so.

525 X Q. 53. You know of Mr. Meinhard putting in a beer-cooling apparatus in his saloon, did you not?

A. I know he had one.

X Q. 54. And after he put it in you knew of his making some changes in it, did you not?

A. I guess he did.

X Q. 55. He didn't like the way it was first put in. Is that true?

A. I think that is so.

X Q. 56. Did he tell you who put in the apparatus for him?

A. No, sir.

X Q. 57. Do you recollect him telling you that Mr. Neuhart and Mr. Mutchler put it in?

A. That I can't tell. I know Mr. Neuhart had a coil at that time, and I guess it was according to his.

X Q. 58. You think Mr. Meinhard made it like Mr. Neuhart's?

A. I think so.

X Q. 59. And you didn't favor coils at that time?

A. I didn't, sir.

X Q. 60. Did you tell Mr. Meinhard so?

A. I think I told him so.

X Q. 61. Didn't Mr. Meinhard shortly after you told him about the coils take those coils out of his ice box?

A. I told him in his place I would have it different and would have a straight pipe.

526 X Q. 62. And that you wouldn't use the coils?

A. I wouldn't use the coils.

X Q. 63. And you told Mr. Meinhard so, did you?

A. Yes, sir.

X Q. 64. Do you know that Mr. Meinhard took the coils out a short time after that?

A. I recollect that he made a change, but how he made it I don't know.

X Q. 65. Mr. Meinhard spoke to you quite often about this apparatus of his, did he not?

A. I don't know. I might start a conversation about his poor beer generally.

X Q. Wasn't an apparatus of this kind something new at that time?

A. I guess not.

X Q. 67. Had you seen Mr. Magin's apparatus at that time?

A. I don't recollect the time. I guess Mr. Magan had the first principle, as I have spoken of, a straight pipe as near the barrel as possible, and a straight pipe, and I guess he was one of the first.

X Q. 68. Do you recollect speaking to Mr. Meinhard about going up to see Mr. Magin's apparatus?

A. I might did.

X Q. 69. You never examined the lower ice box?

A. Where?

X Q. 70. In Meinhard's.

527 A. I never saw it.

X Q. 71. And you don't know what was inside of the upper ice box?

A. I don't know anything about the ice box.

X Q. 72. Mr. Meinhard was anxious to make his apparatus as good as possible, was he not?

A. I should think so.

X Q. 73. And whatever changes were suggested by any person he would make the change, wouldn't he?

A. That I don't know.

X Q. 74. You knew of his making some changes in the apparatus?

A. I knew he made some changes, but how he made them I don't know and can't tell.

X Q. 75. The fact is, Mr. Bartholomay, you didn't know much about the Meinhard apparatus, did you?

A. I don't know anything about it.

X Q. 76. You don't know how it was constructed?

A. No, sir.

X Q. 77. Nor by whom it was constructed?

A. No, sir.

X Q. 78. You never examined it for that purpose?

A. No, sir.

X Q. 79. Has Mr. Meinhard charge of Germania hall, of this city, now?

A. I guess so.

528 X Q. 80. And is carrying on a saloon business there, is he not, in Germania hall?

A. Certainly.

X Q. 81. Mr. Meinhard is well known in this city, is he not?

A. I guess so.

X Q. 82. And is the owner of Germania hall?

A. As far as I know.

X Q. 83. And he is a man who stands well in the community, does he not?

A. I guess so.

X Q. 84. A man who you would believe?

A. Yes, sir; I would; but not after the statement he made. I always took Mr. Meinhard for an honest man, and just as honest as I would expect a man to be.

X Q. 85. What statement have you reference to?

A. I understood he wouldn't believe me under oath.

X Q. 86. Who told you that?

A. I don't recollect; it was told me.

X Q. 87. By whom?

A. I don't know if it was Mr. Magin or somebody told me, but I couldn't recollect it yet.

X Q. 88. And you were surprised to hear that, weren't you?

A. Certainly.

X Q. 89. When did Mr. Magin tell you that?

529 A. Several weeks ago. I don't know if Mr. Magin told me, and I ain't certain, but I think Mr. Magin told me.

X Q. 90. Do you know Mr. Cassebeer, of this city, a plumber?

A. I don't know him much.

X Q. 91. You don't know him well?

A. No, sir.

X Q. 92. He never did any work for you, did he?

A. Yes, sir; he done some work for me.

X Q. 93. I mean Mr. Adolph Cassebeer, who keeps on the corner of Franklin and Clinton streets?

A. I mean the plumber.

X Q. 94. His brother is a hardware merchant, isn't he?

A. I guess so.

X Q. 95. Did you ever examine the apparatus used by Mr. Neuhart?

A. No, sir.

X Q. 96. Mr. Neuhart had coils in his apparatus, did he?

A. So I understood; I might have saw them, but I don't recollect it.

X Q. 97. Did you give Mr. Magin some idea about the kind of an apparatus he should put up?

A. I did not. We talked about having a straight pipe. He ought to have a straight pipe and a short connection into the barrel; that was the conversation.

530 X Q. 98. That was what you told Mr. Magin?

A. Yes, sir.

X Q. 99. And that was before he put his apparatus in, was it?

A. I guess so.

X Q. 100. And did he put one in having a straight pipe?

A. By my recollection he did.

X Q. 101. He put one in just as you advised him to do?

A. I don't know; I guess he carried out that idea.

X Q. 102. How long after you had this talk with him did he put this apparatus in?

A. I don't recollect that.

X Q. 103. You saw it a short time after that, did you, in his saloon?

A. I might, but I can't recollect.

X Q. 104. Did he ask you to look at it?

A. I saw it afterwards, after he put his patent arrangement in there.

X Q. 105. After the patent was obtained on it you saw it?

A. Yes, sir.

X Q. 106. And this talk that you had with Mr. Magin was before the patent was got out?

A. That was before that.

X Q. 107. Did your son help Mr. Magin put in this apparatus?

A. That I don't know.

531 X Q. 108. You have a son a carpenter, haven't you?

A. No, sir.

X Q. 109. Isn't Philip Bartholomay your son?

A. Yes, sir.

X Q. 110. What is his business?

A. He is an architect.

X Q. 111. Did he do anything for Mr. Magin about this apparatus?

A. They might have had some talk about it, but I don't know.

X Q. 112. Don't you know he made a drawing of it?

A. I can't recollect it.

X Q. 113. Did your son speak to you about this apparatus of Magin's?

A. About the same way that we people spoke about, a straight pipe and a near connection, and if there was anything said it would be about the ice box and how it would be lined, but we had nothing to

say about the operation, and that was more about the ice box, I guess.

X Q. 114. Was your son with you when you had this talk with Mr. Magin?

A. I don't know; I guess not.

X Q. 115. Did Mr. Magin say he would make one according to your idea?

A. I don't know; I guess not. I think he made it.

X Q. 116. But you think he made it all the same?

A. I mean a straight pipe.

532 X Q. 117. Did you know Mr. Gordon at that time?

A. Yes, sir.

X Q. 118. Did you also tell him about your idea of an apparatus?

A. I don't know; we might have spoken about it.

X Q. 119. Mr. Gordon visits Mr. Magin's place of business quite often, does he not?

A. Do you mean at that time?

X Q. 120. Yes.

A. He might, but I don't know.

X Q. 121. You have seen him there several times, haven't you?

A. I have seen Mr. Gordon there several times; yes, sir.

X Q. 122. You have no interest in this matter one way or the other, have you?

A. No, sir; I have not.

X Q. 123. How long have you known Mr. Magin?

A. I guess about fifteen or sixteen years.

Redirect examination by Mr. BENNETT, counsel for the complainant:

Re-D. Q. 124. You were subpœnaed to attend here, were you not, Mr. Bartholomay?

A. Yes, sir.

Re-D. Q. 125. After seeing and having explained to you Mr. Magin' new beer cooling and drawing apparatus you advised Mr. Meinhard to go and see it, didn't you?

533 A. I guess I did.

Re-D. Q. 126. And why did you advise Mr. Meinhard to go and see it?

A. I thought it was a practical invention.

Re-D. Q. 127. You thought it was a good practical invention and something new in its way?

A. Yes, sir.

Qe-D. Q. 128. And that it would be a benefit to Mr. Meinhard to have that?

A. Certainly.

Re-D. Q. 129. You didn't at that time understand that Mr. Meinhard had any such apparatus in use, did you?

A. I didn't know anything about Mr. Meinhard's apparatus.

Re-D. Q. 130. Do you know whether Mr. Meinhard followed your advice and went and examined Mr. Magin's apparatus?

A. I guess he did.

Re-D. Q. 131. After Mr. Meinhard had been to Mr. Magin's and examined his apparatus did he say anything about Mr. Magin's apparatus?

A. I don't recollect.

Re-D. Q. 132. Did Mr. Meinhard ever say to you after seeing Mr. Magin's apparatus that he had seen such an apparatus before Magin?

A. No, sir; he never did, sir.

Re-D. Q. 133. Was the putting in of Meinhard's beer cooling and drawing apparatus at Falls Field—a greater part of it—done by your advice?

534 A. No, sir; except the advice I gave him first to put a straight pipe.

Re-D. Q. 134. The only advice that you gave Mr. Meinhard about his apparatus was that he should put in a straight pipe?

A. Yes, sir.

Re-D. Q. 135. And you also condemned the use of coils?

A. Yes, sir.

Re-D. Q. 136. Have you ever made any claim of having had anything to do with the making of the invention which was patented by Mr. Gordon and now owned by Mr. Magin?

A. I have not.

Re-D. Q. 137. No part of that invention was yours, was it?

A. No, sir.

Re-D. Q. 138. You have stated in substance that since the hearing of certain statements said to have been made by Mr. Meinhard when examined as a witness in this case you would not believe him. Let me read to you the following statements, being those made by Mr. Meinhard during his cross-examination as a witness in this case, and then ask you whether you would believe a man who would so testify under oath: "X Q. 943. Is Mr. Bartholomay a man that you would believe? A. I guess he could be believed. X Q. 944. Would you believe him or not? A. I guess I would believe him, but not in everything. As soon as his business interests come in contact with the truth I guess he would be just like other men.

X Q. 945. You think, then, that Mr. Bartholomay is a man
535 of such a character that he would lie where his business interests were at stake? A. I am sure he would do as any other business man. X Q. 946. And you think any other business man would lie when his business interests were at stake, do you? A. I am sure of it." Would you believe a man who has so testified under oath?

Defendants' counsel objected to the question upon the ground that the witness has not stated that he would not believe Mr. Meinhard, and, moreover, that it does not appear what statements were made to Mr. Bartholomay.

A. He stated himself that you couldn't believe it. I never thought that of Mr. Meinhard.

Re-D. Q. 139. You never thought Mr. Meinhard had such an opinion of human nature, did you?

A. No, sir; I did not.

Re-D. Q. 140. It certainly is not your idea of human nature, is it?

A. I guess not.

HENRY BARTHOLOMAY.

Adjourned by consent until December 23d, 1887, at 11 o'clock a. m.

DECEMBER 23D, 1887—11 a. m.

Parties appeared as before and proceedings adjourned by consent to December 24th, 1887, 11 a. m.

536 DECEMBER 24TH, 1887—11 a. m.

Parties appeared as before.

Complainant's proofs in rebuttal closed.

STATE OF NEW YORK, }
County of Monroe, } *ss:*

I, C. D. Kiehel, a notary public within and for the county of Monroe and State of New York, do hereby certify that the foregoing depositions of Raymond Stief, John H. Lehman, Lewis C. Muncie, George J. Weider, Otto Hahn, George J. Englert, Otto Schantz, Adelbert Cronise, Charles Gordon, Michael Magin, Frank E. Witherspoon, John F. Doran, John V. Englert, and Henry Bartholomay — taken on behalf of Michael Magin, the complainant herein, pursuant to notice, which is hereto annexed, before me, at No. 54 Arcade —, in the city of Rochester, N. Y., beginning on the 3d day of December, 1887, and ending December 24th, 1887, as noted hereinbefore; that each of said witnesses was by me duly sworn before the commencement of his testimony; that the testimony of each of said witnesses was taken down by a stenographer in my presence and written out by him; that the defendants appeared by their counsel, Josiah Sullivan, during the taking of said testimony; that I am not connected by blood or marriage with either of said parties nor interested, directly or indirectly, in the matter in controversy.

[L. S.] In testimony whereof I have hereunto set my hand and affixed my seal of office this 24th day of December, 1887.

C. D. KIEHEL,
Notary Public.

(Indorsed:) Filed March 9, 1888. W. S. Doolittle, clerk.

Complainant's Exhibits

(No Model.)

C. GORDON.

APPARATUS FOR COOLING AND DRAWING BEER.

No. 248,646. Patented Oct. 25, 1881.

Nos. 323 & 324
Magin
v.
Karle &
Same
v.
Lehman
} p 537

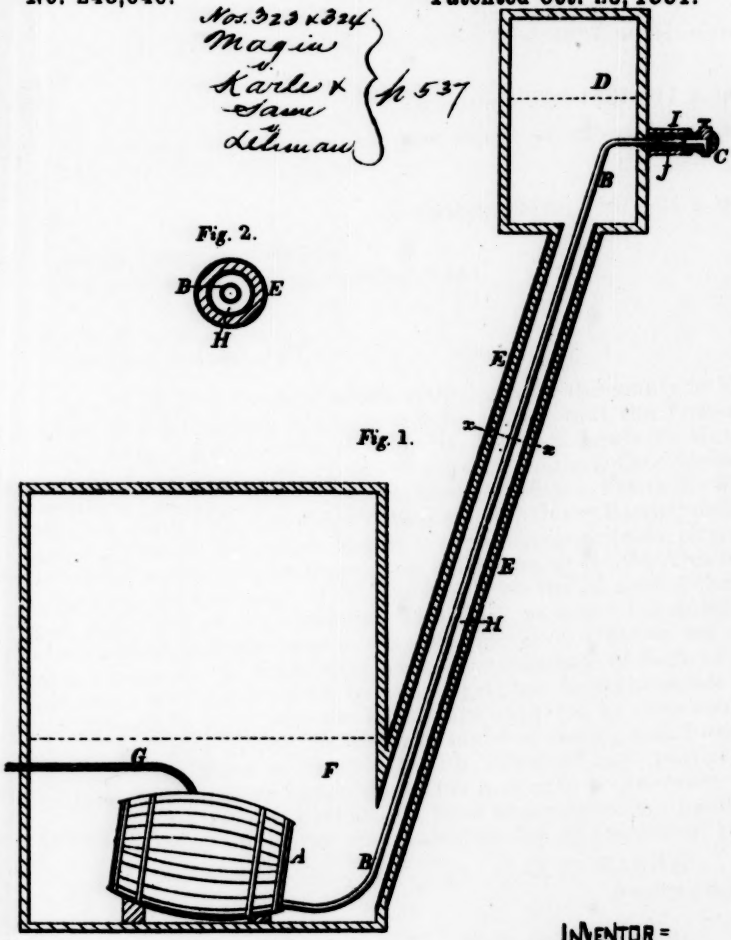


Fig. 2.

Fig. 1.

WITNESSES -
H. G. Phillips.
W. H. Walker.

INVENTOR =
Charles Gordon,
by Geo. B. Selden,
Atty.

538 UNITED STATES PATENT OFFICE.

CHARLES GORDON, of Rochester, New York.

Apparatus for Cooling and Drawing Beer.

Specification forming part of Letters Patent No. 248,646, dated October 25, 1881. Application filed April 23, 1881. (No model.)

To all whom it may concern:

Be it known that I, Charles Gordon, of Rochester, Monroe county, New York, have invented an improved apparatus for drawing and cooling beer, ale, &c., of which the following is a specification, reference being had to the annexed drawings.

(Here follows diagram marked page 537.)

My invention relates to an improved apparatus having for its object the keeping of beer, ale, or other liquid at a low temperature during the operation of drawing the same for consumption; and it consists in surrounding the supply-plate through which the beer is delivered to the faucet with a cold-air passage, for the purpose of maintaining a low temperature in the liquid in the supply-pipe.

My invention also consists in surrouning the cold-air passage and the faucet with a non-conducting jacket, and in the combination, with the ice box and the lower chamber for storing the beer, of the supply pipe and the cold-air passage communicating between the ice box and chamber, as hereinafter more fully set forth.

My improved apparatus for drawing and cooling beer is represented in the accompanying drawings, in which—

Figure 1 is a sectional elevation of the same. Fig. 2 is a section through the supply pipe and cool-air jacket on the line *x x*, Fig. 1.

In the accompanying drawings, representing my improved apparatus, A is the keg containing ale, beer, or other liquid; B, the supply-pipe; C, the faucet from which the liquid is drawn for consumption; D, the ice box; E, the non-conducting jacket surrounding the supply-pipe; F, the lower chamber to receive the kegs, and G the pipe connected with the air-forcing apparatus.

The chamber or box F, in which the beer is stored, may be of any preferred material or size, and provided with suitable racks to support the kegs. Suitable doors should be made in the chamber for the introduction and removal of the kegs, and the walls of the chamber are preferably made non-conductors of heat, in any usual way. The chamber is located in the cellar or lower portion of the building in which the beer is drawn, the latter being forced upward by the pressure of air introduced into the kegs from any suitable air-compressing apparatus through the pipe G.

The supply-pipe B, through which the beer is conveyed to the faucet, is attached to the keg at its lower end by any suitable coupling. The supply-pipe passes upward through a cooling pas-

sage, H, which is surrounded by a non-conducting jacket, which prevents the absorption of heat by the cool air in the passage. The air-passage H communicates at its upper end with the ice-box D, and at its lower end with the chamber F, so that the air cooled by the ice in the box flows or circulates through the passage H, thereby reducing the temperature of the beer in the supply-pipe. The water produced by the melting of the ice in the ice-box will also flow downward through the air-passage, assisting in the cooling operation.

The ice-box may be of any preferred material or form, and, as it is designed to be placed on or behind the counter, it may be ornamented on its exterior in any preferred way. A perforated shelf may be placed in the ice-box to support the ice, as represented by the dotted line in Fig. 1.

That portion of the faucet which projects beyond the ice-box is surrounded by a pipe or tube, I, the space between it and the faucet being filled with resin or other suitable non-conducting substance, to prevent the beer in the faucet-pipe from being heated by the surrounding atmosphere.

The non-conducting jacket E, surrounding the supply-pipe B, may be made in any suitable way. A convenient mode of constructing the jacket is by the use of two pipes of different diameters, one within the other, the space between them being filled with resin or other suitable non-conducting material.

The supply-pipe B may run vertically or at any preferred angle, and through one or more stories of the building in which the apparatus is used.

The chamber F may be arranged for the reception of ice by placing perforated shelves therein.

Any usual form of faucet may be used in connection with my improved apparatus.

539 The ice-box may be constructed in any ordinary way to prevent the melting of the ice by the absorption of heat from the surrounding atmosphere.

It is obvious that two or more supply-pipes, each provided with a separate faucet, may be placed within the cold-air passage H.

I claim—

1. The combination of the ice-box D, supply-pipe B, faucet C, and the cold-air passage H, surrounding the supply-pipe, substantially as and for the purposes set forth.

2. The combination, with the ice-box D, of the supply-pipe B and faucet C, provided with a non-conducting jacket J, substantially as and for the purposes set forth.

3. The combination, with the ice-box D, supply-pipe B, and faucet C, of the cold-air passage H and the non-conducting jacket E, substantially as and for the purposes set forth.

4. The combination of the ice-box D, supply-pipe B, faucet C,

lower chamber F, and the cold-air passage H, communicating between the ice-box and the chamber, substantially as described.

CHAS. GORDON.

Witnesses:
GEO. H. HUMPHREY.
JOHN A. BERNHARD.

(Indorsed:) Equity, 5618. U. S. c't c't, N. dist. N. Y. Magin *v.* Karle, 5617; Do. *v.* Do., Lehman, 5618. Complain't's Ex. Gordon Patent, C. D. K., Spe. Ex. Filed Jan'y 14, 1890. W. S. Doolittle, clerk.

542 *Advantages of the Improved Apparatus.*

The advantages posssesed by the improved apparatus over the old-fashioned coil, or any other method of drawing cool beer, will be readily understood from the foregoing description.

It is easier to clean and keep clean than the coil.

It requires less piping and is therefore cheaper, and it enables the retailer to draw one or fifty glasses of beer at a uniform temperature, a thing which cannot be done with the coil. With the coil the beer is frequently chilled and its life destroyed by too long and too intimate contact with ice, while if any considerable number of glasses are drawn from the coil in a short time the beer is warm and insipid.

This apparatus is fully protected by United States letters patent, and any infringement on the same will be punished to the full extent of the law; likewise any infringement of the patented principle, though the apparatus may differ in construction.

For terms, apply to the undersigned.

M. MAGIN,
Sole Owner for the States of New York, Pennsylvania, and Ohio,
Cor. North Water and Andrews Streets, Rochester, N. Y.

Read the following from the Rochester Tribune of April 8th, 1882:

To the many thousands nothing is so delightful as lager beer when it can be had with all the freshness that it possesses when drawn from the vaults of the brewery, and to the same thousands nothing is so repugnant as the same article when it has become stale; so the great desideratum with the retail dealers has been to give their customers the beverage just as it is intended to be drunk, before the atmosphere and change of temperature have wrought the chemical changes which make it an article unfit for use, unsalable, and decidedly flat, stale, and unprofitable. There have been many devices, but they have only served to send the dealer back to drawing from the kegs conveniently tapped at his counter, with the alternative of throwing away a goodly portion of each keg as soon as its taste warned him that the consumer was ready to turn his back on it. There is no denying the fact that the consumers are the best

judges of quality, and that where the beer is always good there will they go, despite the unfavorable location or surroundings.

Within the past year Magin's Central house, at the corner of Andrews and Water streets, has acquired a reputation for the excellence of his beer that has brought him trade from remote parts of the city, and people go out of their way to sample the lager beer he draws, though it is from one of our local breweries distributing its product on almost every street in the city. The secret of the thing simply is that Mr. Magin draws his beer from the cellar through a Gordon patent cooler. It is death to beer to change its temperature. It must not get too cold, and it surely must not get too warm. The Gordon cooler delivers every glass of beer into the glass at an even temperature, and, though somewhat expensive to construct, it soon pays for itself in the amount of beer saved, to say nothing of the increased advantage of enabling the dealer to have "fresh tap" on hand at all hours. The device consists simply of a small ice box at the faucet, with a non-conducting standpipe connecting with the beer receptacle in the basement, cellar, or ice box where the beer is stored when it is brought from the brewery. Inside the standpipe is a glass-lined or block-tin pipe connecting with the barrel. The standpipe is double, with a layer of resin or any non-conducting substance between the outside and inside. Within the standpipe is the pipe leading to the faucet, which is jacketed for cold-air circulation. More than one pipe may be used, if desired, for the purpose of drawing from more than one barrel or keg at the same time. It is a recognized principle that cold air descends. The drip and the cool air from the ice box passes continually down the inside of the standpipe, which by reason of its non-conducting walls is not affected by the outside temperature, thus maintaining a uniformly low temperature from the very tip of the faucet to the barrel. The pressure to force the beer from the keg is at the option of the user, and bears no relation to the patent cooler.

The faucet ice box may be attached to the counter or any part of the fixtures desired, as convenience may dictate. It may also be made as ornamental as desired. For nearly three years Magin has used this cooler, and it has paid for itself ten times over, and his cosy little hotel has come to be one of the most popular resorts in the city. In fact, the cooler has built him an immense trade, and has led other restaurant-keepers to adopt it. It is now in use at Englert's, Matt. Dolanty's, Gilliards, Barnard's, Oak's, Swikehard & Hondorf's, Shreck's, and other places in Rochester and at Siefert's and other places, Buffalo.

Having become thoroughly acquainted with its merits, Mr. Magin purchased the exclusive right of it for New York, Pennsylvania, and Ohio, not with the intention of excluding others from its use, but for the purpose of selling rights. Neither does he intend to compel them to purchase all their fixtures of him, but permits them to "rig up" their own attachments, except portions called for in the specifications of the patent, which is iron-clad and cannot be ridden over or got around.

The brewers are delighted with it, and all unite in recommending

CIRCULAR TO THE TRADE.

Office of **M. MAGIN,**

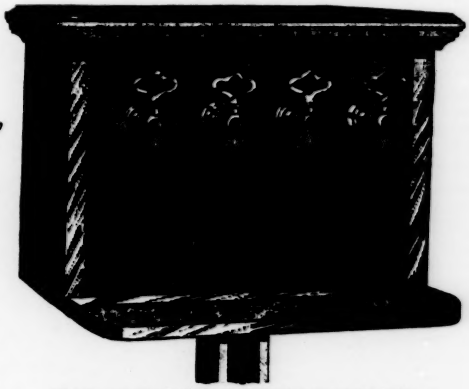
SOLE OWNER OF

Gordon's Patent Improved Beer Cooler

FOR THE STATES OF

New York, Pennsylvania and Ohio.

Nos. 323 & 324 Magin vs Karle & Same vs Lehman p. 540



Charles Gordon's Patent 248,646, Oct. 25th, 1881.

The Best Apparatus for Drawing and Cooling Lager Beer, Ale

And other Beverages.

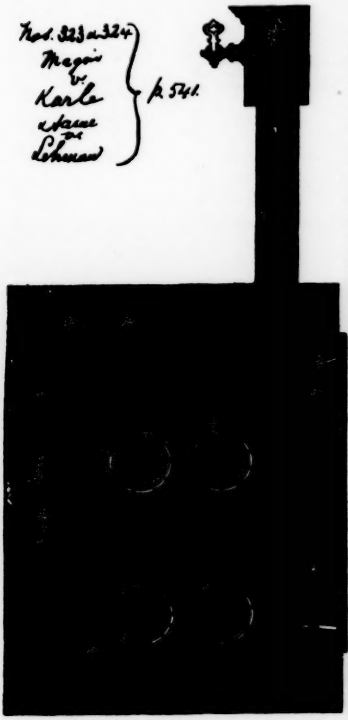
MAINTAINS AN EVEN TEMPERATURE IN EVERY GLASS DRAWN!

Beer, Ale, etc., kept the same as when drawn from the Brewers' Vaults.

NO RETAILER OF BEVERAGES SHOULD BE WITHOUT IT.

TO THE TRADE.

M. MAGIN, Central House, Rochester, N. Y., informs the trade that he has secured the sole right for GORDON'S PATENT IMPROVED BEER COOLING APPARATUS, for the States of NEW YORK, PENNSYLVANIA and OHIO, and is now ready to grant licenses and sell the necessary portions of the apparatus required by said patent. Mr. MAGIN takes pleasure in saying that he has used this apparatus three years in his own place of business, and that it is now in use in the leading restaurants and resorts in Rochester.



It will be seen by the annexed testimonials from *all* the principal lager beer and ale brewers in Rochester, and from the press notices, that this apparatus reaches a desideratum that has long been desired by the retailers of beverages, improving the quality and saving to the dealer in an incredibly short time the cost of the fixtures and patent.

The chief peculiarity of the apparatus consists in the fact that the beer, etc., is kept constantly surrounded by cold air or ice, in the supply pipe all the way from the keg to the spigot of the faucet. The consequence is that *every* glass of beer drawn from the apparatus is cool, of even temperature, and possessing all the well known refreshing qualities of beer "fresh tapped" from the wood, or drawn from the brewer's cellar.

The superiority of the apparatus over anything of the kind yet produced, will be seen from the accompaning illustration at a glance. The beer in the barrels is maintained at a low temperature by being placed in an ice box or refrigerator located in the cellar or other convenient portion of the building. This ice box may be of any ordinary or preferred construction, its sides being provided with suitable non-conducting material *B*, and a door *D* being employed through which the kegs are changed. The refrigerator contains shelving or other suitable devices to support the ice and to maintain a circulation of cold air therein. The beer is forced upward from the keg to the faucet through the pipe *E* by any preferred air pump or pressure apparatus. The pipe *E* is enclosed within an outer tube *B*, consisting of non-conducting material or provided with a non-conducting jacket. The intervening space between the two pipes is filled with cold air, by which the beer in the supply pipe is kept at a low temperature, and is delivered from the faucet fresh and in the most delicious condition as if drawn directly from the keg.

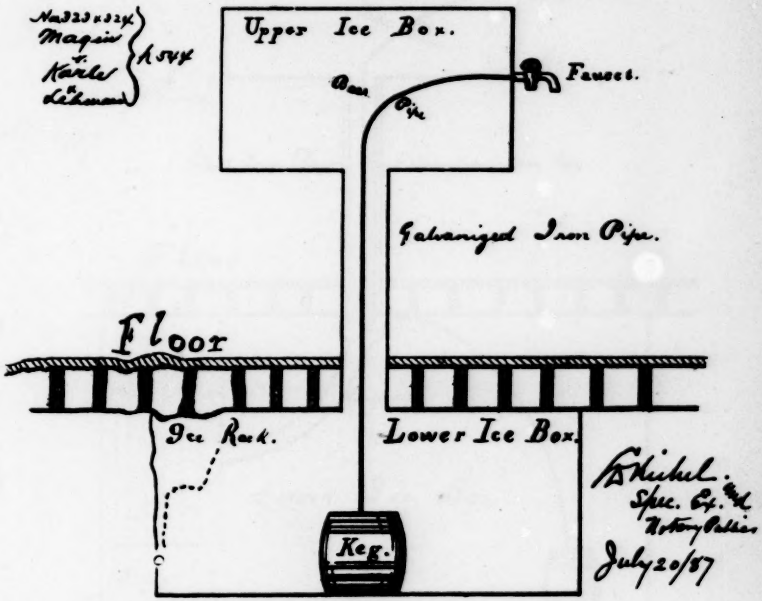
The upper ice box *C* may be made of any ornamental form, as represented, for instance, on the first page.

☞ The number of pipes [*E*] to draw from may be increased if desired.

U. S. Ct. Ct. N. Dist. N. Y. In Equity. No 5618.

Magin vs. Karle.

Complainant's Ex. Sketch Dft's Beer-Cooler



(Indorsed) 5617-5618
Filed Jany. 14, 1890
H. J. Doolittle Clerk.

it highly, for the reason that it does justice to the quality of their product. Many a brewer has been denounced for making poor beer, when it has been the manner of drawing and change of temperature that has worked the mischief with it. The invention is that of a practical brewer, and applies equally well to ale, porter, cider, or other beverages. Some of the processes of drawing beer are absolutely villainous. None are so widely condemned as the system of drawing from coiled pipe. The beer stands sometimes for hours in long coils of pipe, which become absolutely filthy, even if not charged with dangerous corrosion, and there is no method of cleaning them. Some of these coils hold from two to three gallons of beer which is too cold, or when drawn off is lukewarm and tastes badly. The Gordon process does away with all this, the pipe drawing direct from the keg and maintaining at all times an even, low temperature, so that the last glass is as good as the first.

Mr. Magin is doing a lively business locating agencies and granting licenses for the cities and towns in the States of New York, Pennsylvania, and Ohio, and as no first-class restaurant or beer establishment will be without this improvement as soon as its merits become known it is only a question of time when the business will be one of national importance, as sure as beer is the national beverage.

(Here follow diagrams marked pp. 540 & 541.)

543 From all the prominent brewers of Rochester.

The undersigned, engaged in the brewing interest, have witnessed the continued success of Gordon's patent beer-cooler and do not hesitate to recommend and indorse its use. It is a simple yet effective process for securing uniform temperature and giving the best of satisfaction wherever it is used, when properly constructed.

BARTHOLOMAY BREWING CO.,
Per H. BARTHOLOMAY.
ROCHESTER BREWING CO.,
Per W. N. OOTHOUT, *Sec'y.*
GENESEE BREWING CO.
MILLER BREWING CO.,
Per FREDRICK MILLER.
J. G. BAETZEL & BRO.
MEYER, LOEBS & CO.,
Lion Brewery.
E. K. WARREN.
JOSEPH NUNN.
HATHAWAY & GORDON.
P. ENRIGHT.

(Indorsed:) Equity. 5618. Complainant's Ex. Magin Circular, Dec. 22, 1887, C. D. K., N. P. & spec. ex. Filed Jan'y 14, 1890. W. S. Doolittle, clerk.

(Here follow diagrams marked pp. 544 & 545.)

546 *Defendants' Testimony.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } In Equity. No. 5617.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } In Equity. No. 5618.

Proofs for final hearing on the part of the defendants, taken under and pursuant to the 67th rule, as amended, before George F. Slocum, notary public and special examiner, by consent.

ROCHESTER, N. Y., *Oct.* 6, 1887.

Met pursuant to notice.

Present: Messrs. George B. Selden and John R. Bennett, of counsel for complainant, and Mr. Josiah Sullivan, of counsel for defendants.

547 United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } In Equity. No. 5617.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } In Equity. No. 5618.

It is stipulated by and between counsel for the respective parties that the proofs, including the exhibits therein referred to, for final hearing given in the case of Michael Magin *vs.* Eugene Welker as to an alleged anticipation by one John Boehm, of Rochester, N. Y., may be introduced in evidence herein and used with the same force and effect as though retaken in these causes; and

It is further stipulated that no further or other testimony as to the alleged Boehm apparatus shall be taken by either of the parties in either of these causes.

The proofs referred to are the following depositions on the part of the defendants: Ernst S. Schaub, Anthony Kleinhanz, Martin Selbig, John Rusch, and John Boehm, and, on the part of the complainant, the depositions of Charles Gordon, Dominick Murra, Samuel Benswanger, Charles Bush, and Michael Magin.

548 And it is further stipulated that the foregoing depositions shall be treated as evidence as to everything contained therein with like force and effect as though retaken in these causes, but nothing herein contained shall prevent either of

the parties hereto from taking such further and other testimony as they may desire relating to any other matters contained in said depositions other than the alleged use by Boehm; and

It is further stipulated by and between counsel for the respective parties that these causes shall be placed on the calendar for argument at the November term of the court to be held at Syracuse on the — day of November, 1887, and that when said causes are called the court shall be requested to enter an order that they be referred to Mr. Justice Blatchford, with a request that he hear these causes at the earliest moment possible that will suit his convenience, the reason for which being that Mr. Justice Blatchford heard the former causes of this complainant against Welker and McKay, involving the same patent, and in part upon the same proofs, but if the court declines to enter such an order or Judge Blatchford declines to hear the same, then these causes are to stand over to be argued at the Albany term of the court to be held in January, 1888.

It is further stipulated that the counsel for the respective parties shall have the right to use, instead of the originals or certified copies thereof, correct copies of any of the pleadings in the former causes of this complainant againtst Welker and McKay, including the decrees and opinions of the court, such copies being first submitted to the respective counsel and indorsed thereon as correct copies; and

It is further stipulated that the following stipulation, which formed a part of the defendants' record in the cases of Magin *vs.* Welker and McKay, shall be offered in evidence in these causes with the same force and effect as if stipulated herein:

549 "It is hereby stipulated by and between the parties hereto that prior to the date of the invention by Mr. Charles Gordon of the improvement described, claimed in letters patent No. ——, or any of the said improvements there had been in public use in the city of St. Louis, Missouri, and possibly elsewhere a device or apparatus for drawing and cooling beer, in which were upper and lower ice boxes, beer-supply pipes, beer kegs, air pipes, air pumps, and faucets, said beer-supply pipes being led from the lower to the upper ice box in metallic pipes at least four inches in diameter which was filled with sand or gravel; said metallic pipe running from the upper to the lower ice box; said metallic pipe being closed at its lower end, where it joined the lower ice box, and below the sand or gravel by a wooden plug or disk, through which the beer-supply pipes pass, this plug or disk forming a bottom for the pipe for the purpose of holding the gravel in the pipe. The said apparatus was in all respects similar to the Gordon device except the difference hereinbefore stated, it being an apparatus similar to the device shown on page 7 of the 'Cleveland circular,' which is offered in evidence by the defendants, and the same is received and marked 'Defendants' Exhibit Cleveland Circular.'"

It is stipulated by and between counsel for the respective parties that the defendants shall close their proofs for final hearing in both of these cases on or before the 10th day of November, 1887, and that

the complainant shall close his proofs in rebuttal in both of these cases on or before the 15th day of December, 1887.

GEORGE B. SELDEN,
Complainant's Solicitor.
JOSIAH SULLIVAN,
Defendants' Solicitor.

550 Defendants' counsel offers in evidence a certified copy of a decree of the United States circuit court for the northern district of New York in the case of Michael Magin *vs.* Eugene Welker, entered on the 24th day of February, 1886, and numbered 3809, and a like decree in all respects as the above, with the exception that James D. McKay is defendant and the number is 3771, and marded Defendants' Exhibits "A" and "B."

Said exhibits objected to as incompetent, irrelevant, and immaterial.

Defendants' counsel also offers in evidence a certified copy of the decision of the Hon. Samuel Blatchford in the above-named actions of Michael Magin *vs.* Eugene Welker and James D. McKay. The same is received in evidence and marked Defendants' Exhibit "C."

Same objection.

It is stipulated that copies from the Federal Reporter or Official Gazette in the above cases may be read by either party in the final hearing herein.

Defendants' counsel also offers in evidence a certified copy of Judge Blatchford's decision in the above-entitled actions, numbered 3809 and No. 3771, respectively, which is received and marked Defendants' Exhibit "D."

Same objection.

551 ALBERT STIEF, a witness called on the part of the defendant-, being duly sworn, in answer to interrogatories proposed by J. SULLIVAN, Esq., doth depose and say:

Q. 1. What is your name, age, residence, and present occupation?

A. My name is Albert Stief; age, twenty-four years; residence, 32 Galusha street, Rochester, N. Y., and occupation, bartender.

Q. 2. How long have you lived in Rochester?

A. All of twenty years.

Q. 3. Do you know John Meinhard, of this city; and, if so, how long have you known him?

A. I have known him ever since he took possession of Falls Field. I cannot tell exactly when that was, but he has had possession for all of five or six years.

Q. 4. Did you work for Mr. Meinhard at any time?

A. Yes, sir.

Q. 5. In what capacity?

A. When I first started in I was tending bar for him and working off and on.

Q. 6. How long did you continue working for Mr. Meinhard?

A. I worked for him steady till within about a year from the time he gave up Falls Field.

Q. 7. Where did Mr. Meinhard go to after leaving Falls Field?
A. To Germania hall, on North Clinton street.
Q. 8. What was Mr. Meinhard's business while at Falls Field?
A. Lager beer garden and restaurant or bar-room.
Q. How long did you work for Mr. Meinhard at Falls Field?
A. I worked there steady for four years, every day and night.
Q. 10. Were you his bartender during that time?
A. Yes, sir—that is, I was his assistant bartender. There were two bartenders, a head bartender and a *and a* second.
Q. 11. Did Mr. Meinhard use a beer-cooling apparatus in his saloon?
A. Yes, sir—that is, he used it in the bar and not in the summer garder.
Q. 12. How long did he use this apparatus in Falls Field?
A. When I first went there he drawed beer from the wood. I couldn't say how long it was after that he put in the apparatus.
Q. 13. After it was put in how long did you continue using it?
A. He had the apparatus in I should say, until about a year before he left Falls Field.
Q. 14. How long was this apparatus used by Mr. Mienhard in Falls Field?
A. About four and a half or five years altogether; something like that.
Q. 15. Was it in use all the time while you worked here?
A. Yes, sir; except when I first started in.
552 Q. 16. When you first commenced to work for Mr. Meinhard you say that he was drawing beer from the keg?
—. Yes, sir.
Q. 17. Who put this beer-cooling apparatus in Mr. Meinhard's saloon?
A. I think it was Barr & Creeman. Barr, I think, was alone at that time. I don't exactly remember. He done some repairing there; he was a plumber.
Q. 18. Do you know if Mr. Meinhard had anything to do with putting in the apparatus?

Objected to as leading.

A. That is something I couldn't say. I don't know whether he had anything to do with it or not.
Q. 19. Whereabouts in the saloon was the bar located?
A. Towards the same side that the railroad track runs; that would be on the left-hand side as you go in the door.
Q. 20. Would that be the south end of the saloon?
A. At the south end; yes, sir.
Q. 21. Whereabouts in the bar was this beer-cooling apparatus located?
A. It was towards—at the west end of the bar.
Q. 22. Did that apparatus remain in the same place until Mr. Meinhard removed to Germania hall?
A. Yes, sir.
Q. 23. Please describe the apparatus as near as you can.

A. The upper ice box had three faucets. There were little lead pipes than ran from the faucets through the tin pipes about an inch in circumference. These tin pipes extended about four inches above the bottom of the upper ice box and about four or five inches below the upper ice box floor. There was a rubber hose connected onto these tin pipes. These rubber hose went down through to the lower ice box, into the corner of the lower ice box. You could see the rubber hose about one and one-half or two inches in the lower ice box. These small lead pipes ran down to the bottom
553 of the lower ice box, so that we could use them to tap beer. These lead pipes were fastened to the beer kegs by couplings coupled onto the brass faucet that was drove into the keg.

Q. 24. Were those beer kegs stored in the lower ice box?

A. Yes, sir.

Q. 25. How many kegs did you keep tapped generally?

A. We always had two or three on tap.

Q. 26. Did you keep ice in both the upper and lower ice box?

A. Yes, sir.

Q. 27. How was the beer forced from the kegs in the cellar to the faucets in the apparatus you have just described?

A. By water pressure.

Q. 28. Would it be forced up through those lead pipes you have just described?

A. Yes, sir; it was forced by the apparatus. This pump run by water pressure from the lower ice box to the faucet above that we were drawing beer from.

Q. 29. What became of the ice water in the upper ice box?

A. The ice water from the upper ice box would run down through the tin pipe and rubber hose into the lower ice box.

Q. 30. Did those lead pipes also run through those tin pipes and rubber hose into the lower ice box?

A. Yes, sir.

Q. 31. Would this ice *box* also run over these lead pipes on its way to the lower ice box?

A. Yes, sir; whenever there was enough water to rise over those tin pipes it would run down through the tin pipes and rubber hose and over the lead pipe into the ice box.

Q. 32. Was there any way for this ice water in the upper ice box to flow out except through those tin pipes and rubber hose?

Objected to as leading.

A. No, sir; except that when there was sawdust on the ice it would kind of clog up these tin pipes and we would occasionally dip it out.

554 Photographer's drawing shown witness and — asked:

Q. 33. Does that drawing fairly represent the apparatus used in Meinhard's saloon, which you have just described?

A. Yes, sir; I think it does.

Drawing offered in evidence and marked Defendants' Exhibit "Meinhard's Drawing."

Objected to as immaterial, irrelevant, and insufficiently proved.

Q. 34. Did this apparatus give satisfaction while in use?

Objected to as leading.

A. Yes, sir; I never heard a complaint made about the beer drawn from it.

Q. 35. What did your customers say about the beer drawn from this apparatus?

A. Well, sir, we always had a first-class trade Sunday mornings in the bar-room. They always praised the beer which was drawn through this apparatus.

The entire testimony of this witness objected to as irrelevant and immaterial.

Adjourned by consent to October 7, 1887, 10 a. m.

OCTOBER 7, 1887.

Parties appeared as before.

ALBERT STIEF, called for cross-examination, testified as follows in reply to interrogatories by Mr. BENNETT, solicitor for complainant:

X Q. 36. Who are you working for at present?

A. Working for Mr. John Doerr.

X Q. 37. Is he a saloon-keeper in the city of Rochester?

A. Yes, sir.

555 X Q. 38. What is your busines?

A. Bartender.

X Q. 39. Has he a beer-cooling apparatus in his saloon?

A. Yes, sir.

X Q. 40. How long has he had that beer-cooling apparatus in his saloon?

A. There has been one in there for some time. It is a new one—one he has now, put in seven or eight months ago. The old one was torn out and the new one put in by Joe Wolf. He was the manager and chief engineer.

X Q. 41. Where is Doerr's saloon?

A. 253 East Main street.

X Q. 42. Describe this beer drawing and cooling apparatus that Doerr has in his saloon now.

A. Well, sir, we have four faucets to draw beer from. These four pipes run directly down through to the ceiling of the lower ice box. Around these four pipes is a square iron galvanized pipe or box; that also runs to the ceiling of the lower ice box. Then there is a connection made from the bottom of the square galvanized iron box, and there are lead pipes coupled onto these pipes that come down through the square galvanized box, and there is a small piece of rubber hose wired onto each of those beer-drawing pipes and connects them with the faucet and the keg.

X Q. 43. Do you keep ice in the upper ice box?

A. Yes, sir.

X Q. 44. Does this galvanized pipe or box connect the upper ice box with the lower box containing the kegs in the cellar?

A. Yes, sir; it connects with the ceiling of the lower ice box and to this here galvanized box there is a bottom. It runs down to the ceiling of the lower ice box and no further.

X Q. 45. Does the water from the upper box run into this square box or pipe?

A. Yes, sir; the drippings from the ice above in the ice box.

X Q. 46. Then, as I understand you, the four beer-supply pipes pass down through this galvanized pipe or box?

A. Yes, sir.

556 X Q. 47. What kind of an apparatus did Doerr have before this present one was put in?

A. I don't recollect.

X Q. 48. How long did you work for him when he had this first apparatus in?

A. Well, Mr. Doerr was there a little over a year. After I was there a few months he had his bar all torn out and new apparatus put in.

X Q. 49. Then you worked there a few months while he had the old apparatus and before he had the new one put in?

A. Yes, sir.

X Q. 50. How long have you been with Doerr?

A. I started with Doerr about three or four weeks before last Christmas.

X Q. 51. Did Doerr tell you to come here to-day?

A. No, sir—that is, I asked permission to get away to go.

X Q. 52. Who asked you to come here to-day?

A. Mr. Sullivan.

X Q. 53. Where did you work before you worked for Doerr?

A. ——.

X Q. 54. How long did you work there?

A. I couldn't say; worked on and off; quit one time and went back.

X Q. 55. Did you work there off and on two or three years?

A. No, sir.

X Q. 56. Did you work there a year?

A. I doubt it; possibly eight months or a year; I don't remember.

X Q. 57. Was you bartender at Forrest's?

A. Yes, sir.

X Q. 58. Did he have a beer drawing and cooling apparatus?

A. I never took notice. I went down and tapped beer there. I never looked at that.

X Q. 59. Where did you work before you went to Forrest's?

A. Had a place of my own on Mill street, near corner of Mumford street.

X Q. 60. How long did you have that place?

A. About six or seven months, I should judge.

557 X Q. 61. How were you employed before you took this place of your own on Mill, near Mumford street?

A. I was on the corner of Main and Stone streets, working for Mike Gribben.

X Q. 62. How long did you work for Mike Gribben?

A. Three or four weeks.

X Q. 63. Had Mike Gribben a beer-cooling apparatus?

A. Yes, sir.

X Q. 64. Did you have a beer-cooling apparatus at your place on Mill near Mumford street?

A. No, sir.

X Q. 65. Where did you work before going to Gribben's?

A. Theodore Leis.

X Q. 66. Were you barkeeper there?

A. Yes, sir.

X Q. 67. How long did you work there?

A. Two years or two and a half; something like that.

X Q. 68. Where did you work before working at Leis's?

A. I worked at Boehm's, corner of Franklin and St. Paul streets.

X Q. 69. How long was you bartender there?

A. About seven or eight weeks.

X Q. 70. Where did you work before you went to Boehm's?

A. I don't remember; I cannot tell where I worked before I went to Boehm's; I think I worked at Falls Field.

X Q. 71. Where else did you work before going to Boehm's?

A. Falls Field.

X Q. 72. Did you work anywhere else than at Falls Field?

A. Yes, sir; I worked in Buffalo, corner of Genesee and Main streets.

X Q. 73. How long did you work in Buffalo?

A. About a week.

X Q. 74. For whom did you first tend bar?

A. John Meinhard.

X Q. 75. How old were you when you *when you* commenced working for Meinhard?

A. I don't remember.

X Q. 76. How long did you work for him?

A. Five and a half or five years; something like that. I
558 don't remember the exact time; it might have been six years for all I know.

X Q. 77. Where did you go after leaving Meinhard's?

A. Worked in a machine shop for about a year or a year and a half.

X Q. 78. What did you do and where did you go after leaving the machine shop?

A. Went back to Mr. Meinhard's.

X Q. 79. How long did you remain with Mr. Meinhard after going back?

A. I don't remember.

X Q. 80. Was Meinhard still at Falls Field when you went back?

A. Yes, sir.

X Q. 81. Did you remain with Meinhard the second occasion any length of time?

A. No, sir; off and on; that is all.

X Q. 82. Off and on for a year or two?

A. I don't know how long it was; I couldn't say.

X Q. 83. You have a brother Raymond?

A. Yes, sir.

X Q. 84. He is older than you, is he not?

A. Yes, sir.

X Q. 85. Now, didn't your brother Raymond work at Meinhard's while you were there?

A. Oh, a short time; a few months.

X Q. 86. Was not he bartender there?

A. No; not exactly; he was there working; he cleaned up the place during the day. Mr. Meinhard done the bar tending evenings. My brother tended bar off and on also.

X Q. 87. What did you do during this same period?

A. I don't remember; I know I worked for Mr. Meinhard.

X Q. 88. How much older is your brother than you?

A. Two years.

X Q. 89. When was it that your brother worked for Meinhard?

A. I don't remember.

559 X Q. 90. Didn't your brother first work for Meinhard as a bartender off and on for about two years?

A. I couldn't say.

X Q. 91. Didn't your brother work for Meinhard as a bartender steadily for about nine months?

A. I couldn't say.

X Q. 92. How many other bartenders had Meinhard when your brother worked there as a bartender?

A. I don't know anything about it.

X Q. 93. Who else worked for Meinhard during the time your brother worked there?

A. I don't remember.

X Q. 94. Did Otto Schantz work there?

A. Yes; he worked there at one time.

X Q. 95. He was a bartender there, wasn't he?

A. I don't know whether he was or not. I know he worked there steady.

X Q. 96. How long did Otto Schantz work there steady?

A. I couldn't say.

X Q. 97. Didn't Otto Schantz work there during all the time you worked there?

A. No, sir; I don't think he did.

X Q. 98. Was Schantz there when you went to work for Meinhard?

A. Not as I remember.

X Q. 99. Was he there when you left Meinhard?

A. As far as I can remember, he was working in the hall during concerts and dances when I left there.

X Q. 100. How long did Schantz tend bar for Meinhard?

A. I couldn't say.

X Q. 101. Was you bartender for Meinhard at any time?

A. Yes, sir.

X Q. 102. At precisely what period were you bartender for Meinhard?

A. I don't know. I staid with Meinhard five or five and one-half years. I don't remember.

X Q. 103. In what year was it that you entered Meinhard's employ?

A. I don't remember the year, but when he opened up. Not exactly the first day, but soon after; perhaps a few months. I mean when he opened up Falls Field.

560 X Q. 104. And you was bartender for Meinhard during the five or six years that you worked for him?

A. Yes, sir.

X Q. 105. Who else tended bar for Meinhard during the five or six years that you were there?

A. I couldn't say. So many of them I cannot remember.

X Q. 106. You testified on your direct examination that during the time you worked for Meinhard and he had his beer-cooling apparatus, your brother was his assistant bartender. How long was your brother his assistant bartender?

Objected to on ground that witness did not testify on his direct examination that his brother was Mr. Meinhard's assistant bartender; but, on the contrary, he testified that he, the witness, was Mr. Meinhard's assistant bartender.

In view of the evident intention of counsel to instruct the witness and caution him the question is withdrawn.

The defendants' counsel respectfully refers plaintiff's counsel to question 10 and answer thereto to substantiate the correctness of the above statement.

Complainant's counsel states that he does not want any suggestions or reference from defendants' counsel, and that when he does he will call for it, and in the meantime to cease interfering with the cross-examination of a witness by suggestions under the guise of an objection.

Defendants' counsel also requests plaintiff's counsel, in cross-examining witnesses, not to assume in his question facts which are not warranted by the record.

Question withdrawn.

561 X Q. 107. Who was the head bartender while you were at Meinhard's?

A. Felix Guenther.

X Q. 108. How long was he the head bartender?

A. I don't remember.

X Q. 109. Was he the head bartender all the time that you were at Meinhard's?

A. Most of the time I was there.

X Q. 110. Who else besides Guenther was the head bartender weile you were there?

A. Nobody.

X Q. 111. Who was the second bartender while you were at Meinhard's?

A. Myself.

X Q. 112. You were second bartender all the time you were there?

A. Most of the time.

X Q. 113. What do you mean by "most of the time"?

A. I was most of the time second bartender, and part of the time, when Guenther was away, I was head bartender.

X Q. 114. In what year was it that you went to Meinhard's?

A. I told you before that I couldn't tell you the year, but it was when he started in at Falls Field.

X Q. 115. You cannot state what year that was?

A. Not exactly; no.

X Q. 116. Do you know Otto Hahn?

A. Yes, sir.

X Q. 117. Didn't he work at Meinhard's while you worked there?

A. Never, to my knowledge, in the front bar-room. He tapped beer in the concert and dancing hall.

Complainant's counsel gives notice that if the defendants' counsel does not stop interrupting during cross-examination and suggesting language to the commissioner to be placed on the record he will apply to the court for an order appointing a special examiner that the testimony may be taken under the direct supervision of the court.

Defendants' counsel denies the above unwarranted and un-
562 called-for statements and requests Mr. Bennett, complainant's counsel, to keep cool and not get excited and thereby avoid exciting or intimidating witnesses.

Complainant's counsel requests that from this point the further examination of witnesses be taken stenographically, complainant's counsel agreeing to pay the additional cost of the stenographer, so that the court may have the exact language of the witness from which to judge, as much as possible, in the absence of the witness, as to his character and manner of testifying.

X Q. 118. Did I ask you whether he worked in the front hall or not?

A. No, sir.

X Q. 119. Why, then, did you give that answer?

A. Because he didn't work with me.

X Q. 120. Did Otto Hahn work at Meinhard's while you worked there?

A. He worked for Mr. Meinhard, but in a different part of the building.

X Q. 121. Why did you put that onto your answer, that he worked "in a different part of the building," when I didn't ask you any such question?

A. Why, because he was not a steady bartender, off and on.

X Q. 122. How long was Hahn a barkeeper at Meinhard's?

A. I don't remember.

X Q. 123. Was Hahn older or younger than you?

A. I don't know.

X Q. 124. Did you receive your orders from Felix Guenther when he was head bartender?

A. Partly.

X Q. 125. This beer-cooling apparatus of Meinhard's was in the bar-room, was it?

A. Yes, sir.

X Q. 126. Then there was a hall besides the bar-room, was there?

A. Yes, sir.

X Q. 127. And out in the hall they drew the beer direct from the keg, did they?

A. Yes, sir.

X Q. 128. Was beer never drawn in the bar-room and taken into the garden or hall?

A. Sometimes.

X Q. 129. Now, on Sunday, didn't they always draw the
563 beer in the bar-room and take it out into the hall or garden?

A. They did, Sunday mornings, when it was not necessary to open up the hall bar.

X Q. 130. And you always had a first-class trade Sunday mornings in the bar-room?

A. Yes, sir.

X Q. 131. Then Sunday mornings all this beer that supplied your first-class trade in the bar-room was drawn through the beer-cooling apparatus?

A. Yes, sir; as long as I have been there.

X Q. 132. At what time in the morning would you usually get there Sunday mornings?

A. Oh, I was always there between six and seven o'clock Sunday mornings. It depended on how late I stayed Saturday nights. I never got there after seven.

X Q. 133. You were always there by seven o'clock Sunday mornings?

A. Yes, sir.

X Q. 134. And how long would you remain there Sundays?

A. I remained there Sundays and until we closed up Sunday nights.

X Q. 135. And at what hour did you usually close the bar-room Sunday night?

A. Well, the bar-room was closed at the beginning of the concert Sunday evening. There was only one bar open—out in the hall.

X Q. 136. Then on Sundays the bar-room was kept open until the beginning of the concert and then closed?

A. Yes; to the beginning of the evening concert; during the afternoon concert it was open.

X Q. 137. You was bartender, as I understand it, in the bar-room?

A. Yes, sir; that was my main place, excepting Sunday nights, when I had to go out and help the rest of them.

X Q. 138. But all day Sunday and until the Sunday-night concert you were tending bar in the bar-room?

A. Yes, sir.

X Q. 139. Who else tended bar in the bar-room on Sundays?
A. Oh, sometimes Gilbert, sometimes Meinhard, sometimes Felix. Iwas there quite steady; right along.'
X Q. 140. Did your brother and Otto Schantz at times
564 tend bar on Sundays in the bar-room?
A. Very seldom, without we were very busy in the bar-room and nothing doing in the hall.
X Q. 141. Gilbert sometimes tended bar in the bar-room on Sunday, did he?
A. Oh, he did occasionally; not very much.
X Q. 142. Who was Gilbert?
A. Meinhard's partner.
X Q. 143. Who tended bar the most on Sundays; Meinhard or Gilbert?
A. Meinhard.
X Q. 144. Was Meinhard usually there every Sunday, helping to tend in the bar-room?
A. Yes, sir; most of the time.
X Q. 145. Do you know Henry Koehler?
A. Yes, sir.
X Q. 146. Didn't he work at Meinhard's while you were there?
A. He did, sir.
X Q. 147. Did Meinhard have a beer-cooling apparatus out in the garden?
A. I don't believe he did; none out there that I know of.
X Q. 148. Do you know George J. Englert?
A. Yes, sir.
X Q. 149. Didn't he work at Meinhard's when you worked there?
A. Yes, sir.
X Q. 150. Did you know Henry J. Weiland?
A. Yes, sir.
X Q. 151. Didn't he work at Meinhard's when you worked there?
A. Yes, sir.
X Q. 152. Wasn't he bartender there?
A. Occasionally; at picnics or something like that going on; very seldom, though.
X Q. 153. Did you know John V. Englert?
A. I know the three brothers; I couldn't say whether his name is John V. or not.
X Q. 154. How many of the brothers worked at Meinhard's while you worked there?
A. Three.
X Q. 155. While you tended bar for Meinhard who set the beer kegs in place in the cellar?
A. Felix and myself.
565 X Q. 156. Was it the practice that whoever was bartender at the time should put the kegs in the cellar and make the connections?
A. Yes, sir.
X Q. 157. While you were there and Felix Guenther was head

bartender didn't he mostly have the placing of the kegs in the cellar and making connections?

A. No, sir; I done just as much of it as he did, and sometimes more, when he was upstairs alone.

X Q. 158. How did they draw the beer in the bar-room when you first went to Meinhard's?

A. By faucet, from the ice box—an ice box upstairs.

X Q. 159. At that time you didn't keep the kegs in the cellar?

A. Oh, yes, we did; we took in such large quantities that we had to keep it in the ice box.

X Q. 160. You said in your direct examination that when you first went to Meinhard's the beer was drawn from the wood. What did you mean by that?

A. Oh, we had wooden faucets and brass faucets; it was drawn sometimes from one and sometimes from the other. I mean from the wooden faucets.

X Q. 161. Where was the keg kept from which you drew the beer?

A. In an ice box upstairs.

X Q. 162. That is, in the saloon, you mean?

A. In the bar-room.

X Q. 163. How long did Meinhard continue drawing beer in that manner after you went there?

A. I don't remember.

X Q. 164. Was it three or four years?

A. I don't remember.

X Q. 165. Were you at Meinhard's when the beer-cooling apparatus was put in?

A. Yes, sir.

X Q. 166. Who put it in?

A. I don't remember who put it in. I know Cassibeer has been doing the plumbing around there. I don't know whether he put it in or not. In place of Cassibeer I mean Barr.

X Q. 167. It was put in by a plumber, was it?

A. I said I thought it was; he did some plumbing around there; I don't remember.

566 X Q. 168. Did you have anything to do with the putting it in?

A. No, sir.

X Q. 169. How long was the workman, whoever he was, in putting it in?

A. I couldn't say.

X Q. 170. Did the workman or plumber who put it in complete it before he left?

A. I don't remember.

X Q. 171. You saw that apparatus, didn't you, as soon as it was completed?

A. Yes, sir.

X Q. 172. Now, as you first saw that apparatus, was it precisely as you have described in your direct examination?

A. As near as I can remember.

X Q. 173. Do you know of any change ever having been made in that apparatus?

A. No, sir; I do not.

X Q. 174. Did you first draw beer from that apparatus; and, if not, who was the first?

A. That is something that I couldn't tell.

X Q. 175. Were you and Guenther both there during that time?

A. Yes, sir.

X Q. 176. Did Meinhard have anything to do with putting this apparatus in?

A. I don't remember.

X Q. 177. You don't know, do you, of Meinhard's having done anything about that apparatus?

A. I don't remember.

X Q. 178. If he did do anything, you didn't see or know of his doing it, did you?

A. Not to my knowledge or remembrance.

X Q. 179. Before this beer-cooling apparatus was put in the keg that the beer was drawn from was kept in the saloon. Was ice kept on the keg?

A. It was kept in the box where the beer was in.

X Q. 180. Was there any coolers in this saloon ice box for cooling the beer?

A. No, sir.

X Q. 181. Had they at no time beer-coolers in the saloon ice box?

A. No, sir.

X Q. 182. Then, before this apparatus was put in, there was no arrangement for cooling the beer at Meinhard's other than the ice that was placed around the kegs?

567 A. Ice was not put around the kegs; the kegs were put in a box and the ice lay above the kegs.

X Q. 183. And was this the only way they had for cooling the beer at Meinhard's before the cooling apparatus was put in?

A. As far as I can remember.

X Q. 184. Wasn't there a coil of pipe in the saloon ice box?

A. No pipe there only dripping pipe for the drippings of the ice, dripping into a little bucket that stood on the floor below the ice box.

X Q. 185. But there was no coil of pipe in or about the saloon ice box?

A. Not that I know of.

Adjourned by consent to October 8, 1887, at 10 a. m.

OCTOBER 8, 1887—10 a. m.

Parties appeared as before.

Mr. STIEF appeared for further cross-examination.

X Q. 186. Did Meinhard use the beer-cooling apparatus during all the time you worked for him?

A. Yes, sir.

X Q. 187. How many supply pipes were there to that apparatus?
A. Three.
X Q. 188. Did you always use those three beer pipes?
A. Yes, sir.
X Q. 189. When Meinhard moved from Falls Field to Germania hall, did you go with him?
A. Yes, sir.
X Q. 190. Did you see the rubber hose that you have spoken of put on?
A. Not when it was first put on. I didn't take notice.
X Q. 191. Do you know who put it in?
A. I do not, only I spoke yesterday about Mr. Barr doing the plumbing. I didn't pay much attention to the plumbing, but I know he did considerable work there.
X Q. 192. When first did you notice the rubber pipe?
A. Well, I couldn't tell the exact time when it was. I
568 know ever since it was put in I would go down and tap; probably a few months after that or so. I couldn't tell exactly.
X Q. 193. Then you remember this rubber hose as being a part of the apparatus as originally put in, do you?
A. Yes, sir.
X Q. 194. You remember, don't you, of the plumber bringing that rubber hose with him to Meinhard's?
A. No, sir.
X Q. 195. Don't you know where that rubber hose came from?
A. I couldn't say.
X Q. 196. You stated on your direct examination, didn't you, that the rubber pipe extended from the ceiling of the lower ice box about one and one-half or two inches in the lower ice box?
A. Yes, sir.
X Q. 197. You are very positive about that, are you?
—. Yes, sir.
X Q. 198. Do you remember making an affidavit in this case December 10, 1885, before Harvey F. Remington, commissioner of deeds?
A. Yes, sir.
X Q. 199. Were the statements contained in that affidavit as true as the statements you have been making on this your examination?
A. Yes, sir.
X Q. 200. When this beer-cooling apparatus was first used at Meinhard's, did the water pass down through this rubber hose into the lower ice box?
A. Yes, sir; as near as I can remember.
X Q. 201. You don't remember or know of the water from the upper ice box having gone anywhere else, do you?
A. No, sir.
X Q. 202. When was it that Meinhard moved to Germania hall?
A. I don't know; in about '82 or '83.

X Q. 203. Do you remember the drip pipe that was to the upper ice box?

A. The only drip pipes I knew were the rubber pipes.

X Q. 204. Those rubber pipes didn't go up into the upper ice box, did they?

A. The rubber pipes ran down. They were fastened onto the tin pipes and ran down into the lower ice box.

569 X Q. 205. How far was the upper ice box from the saloon floor?

—. I should judge about three and one-half or four feet.

X Q. 206. What was underneath the ice box?

A. Oh, a sort of a cupboard.

X Q. 207. How far down in this cupboard, underneath the upper ice box, did these tin pipes extend?

A. They extended about four inches; about that.

X Q. 208. And how far did they project up into the ice box?

A. About four inches.

X Q. 209. Then there was always about four inches of water in the bottom of the ice box, wasn't there?

A. Yes, sir.

X Q. 210. I think you said that sometimes you dipped the water out of the bottom of the saloon ice box, did you?

A. Yes, sir.

X Q. 211. What did you do with the water when you dipped it out?

A. Dipped it into a pail and poured it away into a sewer or some place.

X Q. 212. Tell me exactly into what place you poured this water.

A. I cannot tell exactly the place; sometimes when we were cleaning the floor I would throw it onto the floor with the rest of the water; sometimes carried it out the back way and sometimes the front; any place that was handy.

X Q. 213. How many pails did you keep back of the bar?

A. I don't remember.

X Q. 214. You don't remember how many pails you kept back of the bar?

A. No, sir.

X Q. 215. You remember, don't you, of keeping some pails back of the bar?

A. Oh, yes; we had pails back of the bar.

X Q. 216. Did you have as many as three or four?

A. Sometimes we had two and sometimes there wasn't one there.

X Q. 217. And didn't you sometimes have four or five?

A. Not as I know of; most of the pails were kept out in the hall. They were all used out there.

X Q. 218. Didn't you understand that in my last question
570 I was asking you about the pails you kept back of the bar?

A. Certainly; got to have pails back of every bar, as far as that is concerned.

X Q. 219. Do you remember the wine cellar that was in the same cellar with the lower ice box?

A. Yes, sir.

X Q. 220. That wine cellar was closed off with a partition, wasn't it, and the door kept locked?

A. Yes, sir.

X Q. 221. And didn't Meinhard keep the key of that cellar?

A. The key was kept back of the bar.

X Q. 222. Where did you keep the pails back of the bar?

A. Under the work board.

X Q 223. How far was it from the ceiling in the cellar to the top of the lower ice box?

A. I couldn't say.

X Q. 225. You remember how the lower ice box was constructed, don't you?

A. Yes, sir.

X Q. 225. What did you keep in the cupboard under the lower ice box?

A. Nothing.

X Q. 226. Was this apparatus put in the same place in the bar where the old ice box was when you drew beer from the wood?

A. No, sir.

X Q. 227. While they were constructing this beer-cooling apparatus did you use the old ice box?

A. Yes, sir.

X Q. 228. As soon as the beer-cooling apparatus was finished, then you commenced using that and stopped using the old ice box, did you?

A. Yes, sir.

X Q. 229. Is this the affidavit which you made December 10, 1885, in the cases of Magin *vs.* McKay and Welker?

A. I think so.

It is admitted that the affidavit shown the witness is a correct copy of the affidavit sworn to by him on the 10th day of December, 1885, before Harvey F. Remington, in the cases of Magin *vs.* McKay and Welker.

571 Complainant's counsel offers in evidence the copy of the witness's affidavit, and the same is marked "Albert Stief's Affidavit of Dec. 10, 1885."

It is admitted that the foregoing copy of the witness's affidavit may be used with like force and effect as though it were the original.

X Q. 230. Before testifying here, did you read or have read to you a copy of your affidavit?

A. Yes, sir.

X Q. 231. Did you also read or have read to you a copy of Meinhard's testimony?

A. No, sir.

X Q. 232. Have you never read or had read to you Meinhard's testimony or affidavit in the cases of Magin *vs.* McKay and Welker?

A. No, sir.

X Q. 233. Have you read or had read to you either of the affidavits of your brother or Otto Schantz?

A. No, sir.

X Q. 234. Before giving your affidavit of the 10th of December, 1885, didn't you have a talk with your brother Raymond about Meinhard and the apparatus which he claimed to have had in use in Falls Field?

A. No, sir.

X Q. 235. Didn't you prior to giving your affidavit of December 10, 1885, have a talk with Otto Schantz about the apparatus which Meinhard claimed he had in use in Falls Field?

A. No, sir; not as I know of.

X Q. 236. Before giving your affidavit of December 10, 1885, didn't you have a talk with Michael Magin about Meinhard and the apparatus which he claimed to have in use in Falls Field?

A. No, sir.

X Q. 237. Didn't you before giving your affidavit of December 10, 1885, have a talk with Meinhard about the apparatus about which you have been testifying to-day?

A. All the talk we had—he asked me if I remembered anything about it, and I told him yes.

X Q. 238. Then you did have a talk with Meinhard before giving this affidavit of December 10, 1885, didn't you?

A. That was all the talk we had.

572 X Q. 239. Where did you have this talk with Meinhard?

A. He called me into his place as I was going by to dinner.

X Q. 240. And then it was that he asked you if you remembered anything about his apparatus, was it?

A. Yes, sir.

X Q. 241. Didn't he then say that he wanted you to make an affidavit as to what you knew about his apparatus?

A. Yes, sir.

X Q. 242. Where was it that you made that affidavit of December 10, 1885?

A. In Mr. Sullivan's office.

X Q. 243. Did Mr. Meinhard come down to Mr. Sullivan's office with you?

A. Yes, sir.

X Q. 244. Isn't John Doerr a member of the Saloon-Keepers' Association?

A. I think he is.

X Q. 245. I think you said you were twenty-four years of age, didn't you?

A. Yes, sir.

Redirect examination:

Q. 246. Has this pipe in the Doerr beer-cooling apparatus which you have been testifying about an open or closed bottom?

A. You have reference to the galvanized square box; yes, sir; it had a closed bottom.

Q. 247. Of what material is this pipe made?

Objected to as irrelevant and immaterial.

A. Galvanized iron.

Q. 248. And what is the length of it?

A. I should judge six and one-half or seven feet.

Q. 249. Is it soldered into the bottom of the upper ice box?

Objected to as leading.

A. Yes, sir.

Q. 250. How is it fastened to the lower ice box?

A. It is fastened with brads and soldered on.

Q. 251. Does the pipe extend below the upper ceiling of the lower ice box?

Same objection.

573 A. No, sir; it is even with the ceiling.

Q. 252. What becomes of the ice water in the upper ice box?

A. There is a waste pipe soldered onto the center of the square galvanized iron box which connects onto the main waste pipe that leads to the sewer.

Q. 253. What is the size of this box?

A. About five inches by eight.

Q. 254. And how long?

A. From five to six feet, I think.

Q. 255. And does this ice water which flows out of the upper ice box into this galvanized iron box remain there until drawn off through the waste pipe you have just described?

Same objection.

A. Yes, sir.

Q. 256. Is there a cock or faucet in the waste pipe which you open in order to allow the water to run out of the galvanized iron pipe?

Same objection, and the attention of the court is especially called to the leading and suggestive character of the redirect examination.

A. There is a stop-cock.

Q. 257. How often do you draw the water out of this galvanized iron pipe?

A. Every morning, except in hot weather, and then twice a day.

Q. 258. Do the beer-supply pipes on their way to the faucets in the upper ice box pass through this body of water?

A. Yes, sir.

Q. 259. How are the lower part- of these supply pipes fastened to the galvanized iron pipe?

A. There is couplings in the bottom of the galvanized pipe which the lower pipes are coupled onto.

Q. 260. Can this water flow through these couplings in any way?

A. No, sir.

574 Q. 261. Is there any way for this water in the galvanized iron pipe to escape except through the waste pipe you have described?

A. No, sir.

Q. 262. When you first commenced working for Meinhard what kind of an ice box did he have in his bar?

Objected to as already fully answered on the cross-examination.

A. It was an ice box that stood on four legs, about a foot and one-half from the floor; two doors at the top and two doors at the bottom.

Q. 263. What was the size of it?

Same objection.

A. In width, about six feet, I should think; in depth, about four or four and one-half; in height, about eight and one-half, I should judge.

Q. 264. Were the beer kegs from which the beer was drawn placed inside this ice box?

A. Yes, sir.

Q. 265. How many kegs did you usually have on tap while using this large ice box?

A. Sometimes one, sometimes two.

Q. 266. Whereabouts in the bar was this large ice box located?

A. West end.

Q. 267. What became of the large ice box?

A. The ice box staid right there till Mr. Meinhard moved out of Falls Field.

Q. 268. What became of the ice water in this large ice box?

A. It dripped into a little bucket that stood below the ice box.

Q. 269. Did the large ice box have a waste pipe in it to carry off that ice water?

A. Yes, sir.

Q. 270. And did that waste pipe lead to the tub or bucket you have mentioned?

A. Yes, sir.

Q. 271. After Meinhard put in this beer-cooling apparatus which you have described, did he cease drawing beer from this large ice box in the saloon?

A. No, sir.

575 Q. 272. What was the size of this upper ice box used in this beer cooling apparatus?

A. About three by three feet—something like that.

Q. 273. When you first commenced working for Meinhard, did he draw his beer from this large ice box in the saloon?

Objected to as already answered by the witness on his cross-examination, and, considering the fact that defendants' counsel persistently declines to consent to the witnesses being examined stenographically, an absolute waste of time, which should be condemned by the court, as the only result is to increase the cost of the litigation to all parties concerded.

Defendants' counsel stated that he does not deem it proper or professional to pay any attention or reply to the volunteered statements of Mr. Bennett, complainant's counsel, and trusts for the future that he will cease making such statements, thereby saving time and expense and encumbering the record with irrelevant matter.

A. Yes, sir.

Q. 274. And how long did he continue drawing it from this large ice box after you commenced working for him?

A. That I don't remember.

Q. 275. After this beer-cooling apparatus was put in by Mr. Meinhard did he quit drawing beer from this large ice box in the saloon?

Objected to, as it is precisely the same question as in 271 redirect, already answered by the witness.

A. Yes, sir.

Q. 276. Who was Mr. Meinhard's bartender when you commenced to work for him?

A. Felix Guenther.

576 Q. 277. How long did he work for him, if you know?

A. I couldn't say. I don't remember.

Q. 278. Where is Mr. Guenther now?

A. I understand he has gone to Germany.

Q. 279. I believe you said you knew Henry Koehler, the three Englert boys, Henry J. Weiland and Otto Hahn?

A. Yes, sir.

Q. 280. What were they principally engaged in doing while working for Mr. Meinhard?

A. They were concerthall bartenders.

Q. 281. Did Mr. Meinhard have a concert hall or summer garden connected with his place of business at Falls Field?

A. Yes, sir.

Q. 282. Did you work for Mr. Meinhard when Otto Schantz worked for him in his saloon?

A. Yes, sir. I have, off and on.

Q. 283. What was Otto Schantz engaged in doing for Mr. Meinhard?

A. Tending bar and cleaning—cleaning out the hall and around.

Q. 284. When did you last see this Meinhard beer-cooling apparatus?

A. When it was moved from Falls Field.

Q. 285. By whom, and where to?

Objected to as already fully answered.

A. I remember pulling it up myself—pulling it apart.

Q. 286. Who assisted you?

A. I don't remember exactly; there were so many there helping Mr. Meinhard move. Everybody was giving a hand in all over.

Q. 287. Was this the time when Mr. Meinhard was moving from Falls Field to Germania hall, in this city?

A. Yes, sir.

Q. 288. On this occasion what part of the old apparatus did you take apart?

A. The upper ice box. It was very easily taken apart. It was quite rotten.

Q. 289. Were those tin pipes and rubber hose still there?

577 Objected to as leading and a grossly improper question to be addressed to a witness who is being questioned as to certain facts relating to an apparatus now out of existence.

A. Yes, sir.

Q. 290. Was the upper ice box in the same place in the bar-room where it had been originally placed?

A. Yes, sir.

Q. 291. Were the tin pipes and rubber hose also in the same place?

Same objection.

A. Yes, sir.

Q. 292. Are you certain as to Mr. Meinhard's coming with you to our office at the time you made this affidavit of December 10, 1885?

A. Yes, sir; I am quite sure.

Q. 293. Before making this affidavit do you recollect having talked with your brother Raymond about his having made an affidavit for Mr. Magin in this same case?

A. No, sir.

Q. 294. Didn't Otto Schantz call to see you before you made that affidavit and ask you to go with him to Mr. Magin's saloon or to go to Mr. Magin's saloon?

A. Yes, sir.

Q. 295. Didn't Mr. Schantz also say to you that your brother Raymond had made an affidavit for Mr. Magin about this Meinhard apparatus?

Objected to as leading.

A. I believe he told me that my brother Raymond knew something about it. I don't recollect about the making of the affidavit.

Q. 296. Do you recollect of having talked with your brother Raymond about the Meinhard apparatus about the time you made this affidavit of December 10, 1885?

578 Objected to as substantially the same question already asked the witness at least three times.

A. No, sir.

Q. 297. Do you recollect of having talked with him a short time after or a short time before making this affidavit?

Same objection.

A. I talked with him after making the affidavit, about it, several times.

Q. 298. Did he tell you in that conversation at whose request he made that affidavit?

A. Well, he told me that Otto Schantz came after him and invited him into Mr. Magin's saloon to have a glass of beer. From there they went to a lawyer's office in Powers' block, I think.

Q. 299. Was this the same Otto Schantz who asked you to go to Mr. Magin's with you?

Objected to, as this witness has already testified in his cross-examination, interrogatory No. 235, that he had no conversation with Otto Schantz prior to giving his affidavit of December 10, 1885.

A. Yes, sir.

Q. 300. Did your brother Raymond on that occasion tell you where Otto Schantz called to see him?

Objected to.

A. I believe he said at the shop.

Recross-examination:

X Q. 301. Referring to the apparatus now in use at Doerr's saloon, does the galvanized-iron pipe contain anything but the beer-supply pipes?

A. No, sir.

X Q. 302. Don't you, when you draw off the water, have to go into the lower ice box?

A. Yes, sir.

X Q. 303. Referring to the old ice box that Meinhard had
579 in his saloon, you said there was a waste pipe that let the water flow out into a bucket. How far did that waste pipe extend up into the ice box?

A. It went from the top story of the ice box down through the bottom and extended an inch or two below he bottom into the pail or bucket sitting under there.

X Q. 304. How did you get the water out of the lower part of the ice box, where you kept the kegs of beer?

A. There wasn't any water in there; there couldn't any get in.

X Q. 305. Didn't you testify on your cross-examination that the drippings from the ice fell down on the kegs of beer?

A. No, sir.

X Q. 306. Haven't you talked with Mr. Meinhard within the last two or three days?

A. Oh, we spoke a few words on our way coming up here yesterday about it; that is about all. I meant to say going back from here.

X Q. 307. You have testified that at one time you were in business for yourself. Didn't Mr. Meinhard either give or loan you the money to go into business?

A. No, sir.

X Q. 308. Do you mean to testify on your oath that Mr. Meinhard at no time gave or loaned you money or enabled you to obtain money with which to go into business?

A. Yes, sir; I never got a cent from him or anybody else.

Redirect:

Q. 309. In answer to cross-question No. — you stated that there was nothing in the galvanized-iron pipe but the beer-supply pipes running through it. Didn't it also contain the ice water?

A. Yes, sir.

Q. 310. You are a German by birth, are you not?

A. Yes, sir.

Q. 311. Are you quite familiar with the English language?

A. Oh, pretty fair.

580 Q. 312. There are many words in the English language used in ordinary conversation that you are not familiar with?

Objected to as a grossly improper question and propounded for no other purpose than to give to the court a false impression of the witness, who, as his foregoing examination will satisfy the court, is thoroughly familiar with the English language and has not, as I ask the examiner to certify, throughout his entire examination hesitated in giving an answer or made an inquiry as to the meaning of a single word or has stated that he could not understand the words used.

A. Yes, sir; there are.

Complainant's counsel asks the examiner to certify to the correctness of his foregoing statement, and, furthermore, that the answers of the witness are written by him in the witness's own language.

Recross-examination:

X Q. 313. Was you born in this country?

A. Yes, sir.

X Q. 314. Have you ever been out of this country?

A. No, sir.

X Q. 315. Did you attend the common schools in the city of Rochester, and was the school that you attended English or German?

A. Both.

Recess till 3 p. m.

581 JOHN MEINHARD, called on the part of the defendants, being first duly sworn, in reply to interrogatories proposed by Mr. JOSIAH SULLIVAN doth depose and say:

Q. 1. What is your name, age, residence, and present occupation?

A. My name is John Meinhard; age, 56 years; residence, 426 North Clinton street, Rochester, N. Y.; occupation, restaurant and concert hall.

Q. 2. Are you the John Meinhard who testified for the defendants in the cases of Magin *vs.* Welker and McKay?

A. Yes, sir; I am.

Q. 3. How long have you resided in Rochester?

A. Since 1876.

Q. 4. What has been your business during that time?
A. Keeping a place like the present on North St. Paul street.
Q. 5. Was that place called Falls Field?
A. Yes, sir.
Q. 6. How long did you keep saloon at Falls Field?
A. Until three years ago—1884 or 1883. It is 1883.
Q. 7. When did you begin to keep saloon in Falls Field?
A. In June, 1876.
Q. 8. And from Falls Field where did you move to?
A. To the present place.
Q. 9. Please state briefly the character of the saloon you kept at Falls Field.
A. We had a bar-room for the regular day business in front on the street and a large concert hall in the rear.
Q. 10. Did you at any time use a beer-cooling apparatus in your saloon at Falls Field?
A. I did.
Q. 11. When did you begin using it?
A. In the summer of 1877.
Q. 12. And how long did you continue using it?
A. I think about four years.
Q. 13. Did you use it all the time during that time?
A. Yes, sir.
Q. 14. When did you quit using it?
A. Some time in 1881. I guess 1881 or 1882; not quite sure about this.
582 Q. 15. Was it during the year 1881 or 1882 that you ceased using this apparatus?

Objected to as leading.

A. I couldn't say; it is too long since.
Q. 16. Please describe this apparatus.
A. There was a small ice box in the bar-room, behind the bar, with three faucets, each of them connected with a lead pipe reaching down to the larger ice box in the cellar. There they were connected by India-rubber hose to faucets to tap the kegs. They were running through the bottom of the small ice box in the bar-room by small tin pipes about an inch wide and about seven inches long. At the lower end of those tin pipes there were pieces of hose fastened, about three feet long, so to lead the ice water down in the ice-house. I guess that is about all.
Q. 17. Who put the apparatus in for you?
A. Mr. Neuhart.
Q. 18. Did you make any changes in this apparatus after Mr. Neuhart put it in?
A. Yes, sir; I did.
Q. 19. Please state what they were.
A. At first we put in some kind of coils on the bottom of the upper ice box, so as to put ice on and keep the beer cooler, but afterwards we took those out, because they could not be well cleaned.

Then we put on this rubber hose. That wasn't on before that. That is about all the alterations made on it, as I recollect.

Q. 20. Do you know who it was took out those coils?

A. I think Mr. Cassebeer took them out.

Q. 21. Does Mr. Cassebeer now reside in Rochester?

A. Yes, sir; he does.

Q. 22. How long did you use those coils in the upper ice box?

A. Only a short while. I am not sure if we had them a couple of weeks or a couple of months.

Q. 23. While using this apparatus did any other plumbers make any alterations or repairs on the same? And, if so, you may state what they were.

583 A. I guess Mr. Barr and Schaub made some repairs there.

Q. 24. What was the length of those tin pipes used in the upper ice box?

A. I guess I stated about seven inches long; am not quite sure about an inch more or less.

Q. 25. Were they fastened into the upper ice box?

A. Yes, sir; they were soldered into the bottom of the upper ice box.

Q. 26. Did those tin pipes run above the bottom of the upper ice box?

A. Yes, sir; about five or six inches.

Q. 27. Did they also run below the bottom of the upper ice box?

A. Yes, sir; about two inches.

Q. 28. How were those rubber hose fastened to the bottom of those pipes?

A. They were just drawn over the tin pipes.

Q. 29. Were they drawn over tightly?

A. Yes.

Objected to as leading.

Q. 30. What was the size of those rubber hose which were fastened to the tin pipes?

A. Very near the size of the tin pipes, so that we had some trouble in drawing them over.

Q. 31. Did you keep ice in the upper and lower ice boxes?

Same objection.

A. Yes; we did.

Q. 32. What became of the ice water in the upper ice box?

A. It was flowing down into the lower ice box.

Q. 33. How did it flow down?

A. It first ran through to the tin pipes; then through the rubber hose into the lower ice box.

Q. 34. Did the rubber hose which was fastened to these tin pipes run into the lower ice box?

584 Objected to as leading, and the attention of the court is especially directed to the leading character of the examination of this witness, by whom it is attempted to establish prior use of an apparatus no longer in existence.

A. Yes, sir; it did run in a few inches.

Q. 35. Was there any other way for the water in the upper ice box to pass out except through those tin pipes and rubber hose?

Same objection.

A. There was none.

Q. 36. What was the length of those lead pipes through which the beer ran?

A. I should think about ten feet.

Q. 37. How many of those lead pipes were there?

A. There were three of them.

Q. 38. How did those lead pipes run from the upper to the lower ice box?

A. They did run—not straight—oblong, because they had to go through part of the partition between the bar-room and hallway.

Q. 39. Whereabouts did they enter the lower ice box?

A. On the northeastern corner of that box.

Q. 40. Would the water that passed out of the upper ice box through those tin pipes and rubber hose into the lower ice box flow over those lead supply pipes?

Objected to as leading.

A. It had to flow over them; there was no other way for it.

Q. 41. How was the beer forced through those lead pipes to the faucets in the ice box in the saloon?

A. By an air pump.

Q. 42. Please look at this photograph drawing and state by whom the original drawing was made.

Witness shown "Defendants' Exhibit Meinhard's Drawing."

585 A. It was made by me.

Q. 43. Was that made by you while being examined as a witness in the cases of Magin *vs.* Welker and McKay?

A. Yes; it was.

Q. 44. Please describe that drawing, stating what those letters represent.

A. "A" is the kegs in the lower ice-house; "B" is the connecting hose with the faucets; "C" is the lead beer pipes; "D" is the tin pipes in the bottom of the upper ice box; "F" is the upper ice box in the bar-room; "G" is the ice-house in the cellar; "H" is the rubber hose surrounding beer pipes and fastaned to the tin pipes "D;" "*i*" is the faucets to the tap barrels in the ice-house. The faucets in the upper ice box appearing one above the other sh-uld be in a straight line (the drawing ain't perfectly right), and near the upper end of this ice box the lead pipes connected with the faucets, leading down to the bottom of the box and running back to the rear end of the box and up to the upper end of those tin pipes so as to get through them; the whole of those lead pipes were not apart, as they appeared here in the drawing, but went in the lower ice-house in a bundle.

Q. 45. Was the upper ice box lined?

A. Yes, sir; it was lined with zinc.

Q. 46. In what part of the bottom of the upper ice box were those tin pipes located?

A. Near the rear end; about the center.

Q. 47. Did those lead supply pipes running from the faucets into the tin pipes run along the inside bottom of the upper ice box?

Objected to as leading, and the attention of the court is again directed to the manner in which this witness's examination is being conducted, and this, too, for showing to the court, as is quite apparent, that counsel is unwilling to trust the witness to describe in his own language precisely what his alleged construction of apparatus was.

586 Defendants' counsel states that he does not deem it necessary to reply to such nonsense and requests the counsel for the plaintiff for the future to desist from taking up so much valuable time of the commissioner and the counsel and witnesses in this case, and thereby enable defendants' counsel and witnesses to proceed in a regular and proper manner.

A. Yes, sir; they did.

Q. 48. Who took this apparatus out of your saloon in Falls Field?

A. I am not quite sure; some man I had to remove things from the place, but I recollect that Albert Stief was one of the helpers.

Q. 49. Were those tin pipes and rubber hose which were fastened to them in this apparatus when you took it out of your saloon on the occasion of your removal to Germania hall?

A. Yes, sir; they were.

Q. 50. Was this beer-cooling apparatus in your aloon in Falls Field when you testified in the cases of this plaintiff against Welker and McKay?

A. Yes; it was.

Q. 51. Did you so testify in that case?

A. I think I did.

Q. 52. Could this apparatus have been seen there at that time by Mr. Magin or his counsel if they had visited your saloon?

A. It could be seen, but, as much as I know, nobody asked for it.

Q. 53. Would you have shown it to them had they called?

A. I would.

Q. 54. Have you any part of that apparatus now? And, if so, you may state what part of it.

A. Yes; the faucets and part of the tin pipes--oh, no; that is wrong; the lead pipes I intended to say.

Q. 55. Did this apparatus while in use answer the purpose for which it was intended and give satisfaction?

Objected to.

A. It did.

587 Q. 56. What effect did it have on the beer?

A. It was always fresh and cool.

Q. 57. Who were your bartenders while you used this apparatus at Falls Field?

A. Felix Guenther, Albert Stief, and Otto Schantz.

Q. 58. How long was Otto Schantz your bartender?

A. I think about a year.

Q. 59. When was that?

A. I think it was part of 1880 and 1881.

Q. 60. Where is Felix Guenther now?

A. I was told he went back to Germany, but I am not sure whether he is there at present or not.

Q. 61. Do you know Henry Koehler, Otto Hahn, George J. Englert, Henry J. Weiland, and Raymond Stief?

A. I know some of them.

Q. 62. Which of them.

A. Raymond Stief, Otto Hahn, and Koehler.

Q. 63. Do you know the Englert boys?

A. I know some of them, but which were called by the first names I am not sure to-day. I had about fifty boys working there on different occasions.

Q. 64. Did those parties work for you?

A. Yes; they did.

Q. 65. What did they do?

A. The stronger ones acted as barkeepers and the boys as waiters in the rear hall. Some of them had occasionally to do some work in the bar-room, as cleaning up, and so on.

Q. 66. Did those boys work for you steadily?

A. None of them except Albert Stief.

Q. 67. What were the boys principally engaged in doing for you?

A. They were waiter boys, and when we had concerts in the rear hall or picnics.

Cross-examination:

X Q. 68. Do you understand the English language?

A. I think I do pretty well; not as good as German.

X Q. 69. Did you have any trouble in your direct examination in fully and understandingly expressing yourself in giving
588 your answers in the English language?

A. I didn't have much trouble about it. Perhaps on one or two points I wasn't quite sure about it, but I think the answers are all right now, if you so have them.

X Q. 71. Did you have any trouble in understanding any of the questions put to you by Mr. Sullivan?

A. I did not.

Adjourned to October 13, 1887, at 10 a. m.

Adjourned to Oct. 17, 1887, at 10 a. m.

Adjourned to Oct. 24, 1887, at 10 a. m.

OCTOBER 24TH—2 o'clock p. m.

Parties appeared as before.

JOHN MEINHARD, recalled and examined by defendants' counsel, Mr. SULLIVAN, testified as follows:

Q. 72. While Mr. Gilbert was in business with you in Falls Field did he have much to do about the saloon?

A. He was in the saloon generally, but he didn't attend to the bar very often.

Q. 73. What were Mr. Gilbert's duties chiefly?

A. His part generally was to entertain the guests. He was talking and laughing with them.

Q. 74. Did he have anything to do about making any changes or repairs on this apparatus?

A. He did not.

Q. 75. Who attended to that?

A. I always attended to that.

Q. 76. The witness shown Defendants' Exhibit Meinhard Drawing and is asked if that fairly represents the beer-cooling apparatus which he used in the saloon and about which he has testified in this case.

A. Yes, sir; it is pretty near as good as I could make a drawing of it.

Q. 77. Please look at this model and state if that model fairly represents the apparatus which you used in your saloon and
589 about which you have testified in this case.

A. It does; only the proportions are not exactly well taken, I should think.

Q. 78. By whom was this model made, if you know?

A. Mr. Schaub asked me about it, and I guess he made it.

Model offered in evidence and marked "Defendants' Exhibit Meinhard Apparatus Model."

Q. 79. When you gave your testimony in the year 1882 in the cases pending in this court between this complainant as complainant and James D. McKay and Eugene Welker, defendants, did you then give the names of your bartenders who used this apparatus in your saloon?

Objected to, as the testimony then given is the best evidence.

A. I think I did give them. I don't know if all of them there had to do with it or not.

Q. 80. Which of your bartenders had to do with this apparatus?

A. For the longest time I guess young Albert Stief had to do with it.

Q. 81. And who else?

A. Felix Guenther and Otto Schantz.

Q 82. Were those your bartenders in the front saloon, where this apparatus was?

A. None of them was the regular bartender. They all had to

attend to the business; they all had to do work all around the place.

Q. 83. Did you tend bar yourself during that time?

A. Very seldom.

Q. 84. You had general charge of the saloon, did you?

A. I had charge of the whole business and tried to be outside as much as possible and didn't like to go near the bar.

Q. 85. Have you recently consulted your books to enable
590 you to fix about the time Mr. Cassebeer took those coolers out of this apparatus?

A. I have; last night.

Q. 86. Have you that book now with you? And, if so, you may produce it and refer to the page on which that entry is to be found.

A. I have the book here; there is no page on, but it is the month and the year.

Q. 87. What entry do you find there—of what date?

A. On the 29th of October, 1878, I find a bill paid to Mr. Cassebeer, $11.

Q. 88. That was the first bill that you paid Mr. Cassebeer?

A. I think it is the first bill I paid him; I can't find another one before that.

Q. 89. What was that bill for?

A. I tried to find the bill, but the bill is gone, so I can't say exactly what it contained; but I think it is different work, and I am pretty sure it was included in the taking out of the coolers in the apparatus.

Q. 90. Was the taking out of these coolers about the first work that Mr. Cassebeer did for you?

Objected to as leading.

A. I have the impression that it was, but he might have done some other little job before that.

Q. 91. Did you have a bill from Mr. Cassebeer for that work?

A. I am sure I had.

Q. 92. What enables you to state that you are sure you had?

A. All my bills are numbered and there is the number—No. 15—and I got the bills bundled up; and all the others are there, but 14 and 15 are out of the bundle.

Q. 93. Those numbers appear on your book, do they not?

A. Yes, sir.

Q. 94. Have you made search for those bills?

A. Yes, sir; I tried to find them among the others, but I don't find them, and I guess I had to give them in this former lawsuit to Mr. Sullivan, and I don't know, but I had no reason to take them out for any other purpose.

591 Q. 95. Have you looked for them recently?

A. Not before last night. I tried to find it for Mr. Cassebeer to find the dates.

Defendants' counsel offered in evidence page referred to by the witness and marked Defendants' Exhibit Page One from Meinhard's Book.

Cross-examined by Mr. BENNETT, counsel for the complainants, the witness testified as follows:

X Q. 96. Does this book which you have produced commence with the commencement of your business in Rochester?

A. I guess it does. (Book shown witness.) Yes, sir; it does, commencing July, 1876.

X Q. 97. And this book you continued to keep until the end of the year 1879, did you not?

A. Yes, sir.

X Q. 98. I notice at the rear of this book three pages are torn out. When did you tear them out?

A. Don't know.

X Q. 99. Did you tear them out last night?

A. I did not.

X Q. 100. Did you tear them out within a month?

A. It may be I took them out about twenty years ago.

X Q. 101. And it may be you took them out last night?

A. It may be I didn't take them out within the last ten years.

X Q. 102. Have you taken them out within the last year?

A. I have not.

X Q. 103. Do you know what reason you had for tearing out those three leaves, appearing as they do to be the only leaves removed from this book?

A. I suppose there was quite another kind of business noticed there, as the former part of the book shows, too. I suppose it was some old stuff taken out years ago.

X Q. 104. Why was it you didn't tear out the old stuff in the front of the book?

A. There was too much of it.

592 X Q. 105. Does this book contain all the moneys expended by Gilbert & Meinhard in their saloon business from July, 1876, to December, 1879?

A. It does.

X Q. 106. And whenever you made a purchase the amount of that purchase was recorded in this book, was it?

A. Yes, sir.

X Q. 107. So that by reference to this book we will be able to fix the different expenditures by Gilbert & Meinhard and the date of those expenditures; is that true?

A. Yes, sir.

X Q. 108. You have referred to Mr. Cassebeer; what work did he first do for you?

A. I couldn't say; there was so many different repairs that I couldn't say now.

X Q. 109. Have you any idea what was the first work he did for you and when he did it?

A. I guess he took out those coolers as his first job.

X Q. 110. Describe those coolers that he took out.

A. They were little tin pipes and bent around about five or six times. I can't explain how it is in English. I mean coiled around.

X Q. 111. How many times did each of the pipes coil around?
A. I think about six times.
X Q. 112. And how many of these coils had you?
A. Had three of them.
X Q. 113. One for each beer-supply pipe?
A. Yes, sir.
X Q. 114. And where were those coils located?
A. There at the bottom of the ice box.
X Q. 115. And who do you say removed those coils?
A. Mr. Cassebeer.
X Q. 116. And when were they removed, if you know?
A. My first impression was that we had them removed in 1877 already, but by looking at the book and seeing Mr. Cassebeer hadn't done any work there, and I am sure that he took them out, so it seems they were taken out in 1878.

X Q. 117. You didn't have any rubber pipes or hose cover-
593 ing the beer-supply pipes until after these coils were taken out, did you?
A. We had the rubber hose put on, I guess, very soon after we had the apparatus put in.
X Q. 118. Didn't you have the rubber hose put on after the coils were taken out?
A. I wasn't sure about this when I testified before. I thought all those alterations were done about the same time, in the summer of 1877, but now I am sure the rubber hose was put on in 1877, while the coils were taken out in 1878.
X Q. 119. I didn't ask you about any repairs; I asked you the simple question whether you had rubber hose around the beer-supply pipes before the coils were taken out.
A. Well, I really am not sure what we had to do there about ten years ago, and I know what we have done, but about the time as you find here I wasn't quite sure. I might have said that one thing was done before and one afterwards without being sure about it. I don't recollect, sure, how it was.
X Q. 120. Then you come here to testify, do you, under oath without being sure of what you are saying?
A. Well, I suppose nobody could know what he done ten years ago.
X Q. 121. Then why do you come here and pretend to testify as to what took place ten years ago?
A. Because there are some people that want to trouble us and make money out of us, and therefore I come here.
X Q. 122. Who wants to make money out of you?
—. It seems some people want to make money.
X Q. 123. Who wants to make money out of you?
A. It is a loss th me to come here so often.
X Q. 124. Where you subpœnaed to come here?
A. I was to come here and I guess it was my duty to come, but I don't want to come and be fooled like a school boy.
X Q. 125. Who told you to come here?
A. Mr. Sullivan.

594 X Q. 126. Why did you come here if your time is so valuable and you don't know anything about it?

A. I know as much about it as necessary, and what I know I will tell and no more or less.

X Q. 127. Is it necessary for you to know when rubber hose or pipes were put around the beer-supply pipes?

A. It is true that it was, and therefore I say so, but if it was done the month before or the month after I am not sure about it.

X Q. 128. Haven't you testified under oath that you had no rubber hose around the beer-supply pipes until after the coolers were taken out?

A. I have not.

X Q. 129. Let me read you your testimony to show you how little your recollection and word is worth.

A. I know exactly what I said.

X Q. 130. If you know exactly what you said, tell us what you did say about the rubber pipe.

A. I said very many improvements or repairs were made to this apparatus and one after the other, and I guess I testified that the coils were taken out first and the rubber put on afterwards, and the book shows that it is impossible, and so, of course, it is impossible, and I suppose no man is needed or wanted to know ten years ago—to know what he has done if his place is fixed up or privy, and that is what Cassebeer done, and between that he has done another job, and I guess it isn't my business to come here and testify to all such things.

X Q. 131. Then you did testify under oath that you had no rubber pipes around the beer-supply pipes until after the coils were taken out?

A. I testified that one was done after the other, and now it appears one thing was done first and the other afterwards.

X Q. 132. From what does it appear?

A. From this book it appears and I didn't look at it before.

X Q. 133. What appears from looking at the book?

A. It appears that the hose was on first and the coils taken out afterwards.

595 X Q. 134. Now refer to your book and show me where it appears that the coils were taken out first and rubber pipes put on afterwards.

A. The coils were taken out in 1878 and I thought the whole thing was done in 1877, and so it appears that the hose was on first and the coils put on afterwards. We put them on to keep the water from the floor. From the tin pipes the water went on the floor.

X Q. 135. Before you had rubber hose, then, the water went out of the tin pipes onto the floor?

A. Yes, sir.

X Q. 136. And didn't you have buckets under the tin pipes to catch the water?

A. Yes, sir; but those tenders generally didn't attend to it and the floor was wet all the time, and that was the reason I put on the ose.

X Q. 137. For how long a time did you use the apparatus without the rubber hose?

A. I can't say how long; perhaps a month, or two or three.

X Q. 138. Have you any way in which you can fix how long it was?

A. I cannot.

X Q. 139. Have you read the testimony which you gave in the case of Magin against Welker and McKay within a few days?

A. I did not.

X Q. 140. When did you last read or have it read to you?

A. I read it when we commenced this testimony before.

X Q. 141. That was before you gave your direct testimony?

A. Yes, sir.

X Q. 142. Did you read your affidavit at the same time?

A. I did not.

X Q. 143. Have you read your affidavit to-day or yesterday?

A. No, sir.

X Q. 144. Heard it read?

A. No, sir.

X Q. 145. Have you had a talk with Mr. Cassebeer this morning?

A. I had not.

X Q 146. Have a talk with him yesterday?

A. Last night when he came in to find a date of this work.

X Q. 147. And Mr. Sullivan was there, too, wasn't he?

A. Yes, sir.

596 X Q. 148. What is there about this book which you have produced that enables you to fix in your mind that the rubber hose was there before the coils of pipe were taken out?

A. It doesn't show anything about the rubber hose, but it shows the coils were taken out later.

X Q. 149. What is there to show?

A. I suppose Mr. Cassebeer took that out, and instead of 1877, as my opinion was, he took them out in 1878.

X Q. 150. How do you know?

A. By his bill.

X Q. 151. Where is his bill?

A. I don't know and can't explain.

X Q. 152. Didn't you tell me you lost the bill?

A. Yes, sir; lost, of course, and I couldn't find it last night.

X Q. 153. You said a moment ago that his bill showed that fact, that the coils were taken out in 1878. When did you see that bill?

A. I didn't see it, perhaps, for years.

X Q. 154. Then how do you know the bill shows that?

A. Because I know it was one of his first jobs, that he took out the coils. I got acquainted with him about that time, and the first one or one of the first jobs was taking out these coils.

X Q. 145. How do you know the coils were taken out in 1878?

A. My impression was it was in 1877, but now I am sure it was in 1878, because nobody else took them out.

X Q. 156. Did Cassebeer tell you he took them out in 1878?

A. I was quite sure he done so.

X Q. 157. Did he tell you he took them out in 1878?

A. He did not.

X Q. 158. Has anybody told you that Cassebeer testified he did?

A. No, sir.

X Q. 159. Then how do you know he did take them out?

A. Because he has done no work for me before 1878.

597 X Q. 160. What was the first job he did for you in 1878?

A. I don't know if it was just this, but it was one of the first jobs he done for me.

X Q. 161. What was the first job he did for you?

A. It may be he took out the coils and it may be he fixed the water-closet.

X Q. 162. What did he do first?

A. I don't know.

X Q. 163. What time in 1878 do you say he took these coils out?

A. I can't fix any date, because his bills were running for a couple of months generally. This bill of $11.00, as it appears on the book, may have been for three months or four months or two months, and I am not sure.

X Q. 164. How often did Cassebeer render his bills?

A. Sometimes he waited longer, and generally waited a couple of months or three or four or five months.

X Q. 165. Have you seen Mr. Cassebeer's books to-day or yesterday?

A. No, sir; never seen them.

X Q. 166. Has anybody told you what his books contained?

A. No, sir; he only came to see this book because he couldn't fix his date and he couldn't find his and tried to find mine.

X Q. 167. You found nothing in your book about the fact that you paid him $11.00 on the 29th of October, 1878?

A. Yes, sir.

X Q. 168. There is nothing to show what that work was, is there?

A. No, sir.

X Q. 169. And it is a mere matter of guess-work with you what that work was. Is that so?

A. I don't know what you mean by this, I am sure. It included taking out the coils.

X Q. 170. Mr. Cassabeer worked for you after 1878, didn't he?

A. Yes, sir.

X Q. 171. A large amount of work?

A. No, sir; never a large amount of work.

X Q. 172. Was this bill of $11 one of the largest bills which you ever paid him?

A. No, sir; it wasn't; there was one afterwards in the book, I think, $13.50, and it is all included in this book.

598 X Q. 173. After that his bills were very small, were they?

A. They are generally smaller.

X Q. 174. About how much would you say his bills ran?

A. It might have been between twenty-five and fifty dollars a year.

X Q. 175. How soon after 1878 did Mr. Cassebeer work for you again?

A. That could be shown by the next bill. There is only one other bill contained in this book and that is the next work he done.

X Q. 176. Did he work for you within a few days after that time?

A. I guess not.

X Q. 177. A few months?

A. No, sir.

X Q. 178. How do you know that these coils were not removed by him after 1878 and included in his next bill?

A. I was of the opinion that it was taken out before, because all the complaints we had was on account of these coils, the beer tasting bad, and therefore my opinion was they were taken out in 1877 already, but if they were not taken out in 1877, as appears by Cassebeer's bills, I am sure they were taken out in 1878.

Q Q. 179. So you have seen Cassabeer's bill, have you?

A. No, sir; I have not. I say it appears by having done this work in in 1878.

X Q. 180. Didn't you say it appeared by Cassebeer's bills?

A. Oh, if I say it by this bill that is shown here.

X Q. 182. Why do you keep referring to Cassebeer's bills if you haven't them?

A. I looked at the book and there it is shown the $11 was paid to him and I am sorry we don't have the bill here.

X Q. 182. You have got all the other bills?

A. Yes, sir; we have got the next bill.

X Q. 183. And you have got all the other bills for the moneys you paid out?

A. No, sir; I couldn't say we have them all. There might be some others missing.

X Q. 184. Didn't you say you had them all but 14 and 15 and Cassebeer's was 15?

599 A. Yes, sir; those bills, but some was taken out and Neuhart's was taken out, and not finding this it was my idea we had taken out this bill to show Mr. Sullivan as we had taken out Neuhart's bill.

X Q. 185. It is a strange thing that this particular bill should be gone, isn't it?

A. It isn't strange at all that it was taken out for the first lawsuit, and it is my opinion it was.

X Q. 186. Do you swear it was?

A. No, sir; I haven't and have no reason at all.

X Q. 187. How do you know these coils were not taken out in 1879?

A. I know by knowing the complaints about it; of course, the only complaint about it was the bad taste of the beer.

X Q. 188. There were complaints about the beer, then, when you had the coils?

A. Yes, sir.

X Q. 189. Do you know of Mr. Barr doing some repairing for you upon that apparatus?

A. Yes, sir.

X Q. 190. Did he repair the apparatus before or after Cassebeer?

A. He has done the first work at it.

X Q. 191. He repaired it, then, before Cassebeer took out the coils?

A. I wouldn't say he repaired anything about it at all; he put it in.

X Q. 192. Barr put it in, did he?

A. Yes, sir.

X Q. 193. And when did Barr put it in?

A. 1877.

X Q. 194. When it was first put in did it have these coils?

A. It did not.

X Q. 195. How was it when it was first put in?

A. The pipes were running right down as shown here and by the advice of somebody, I guess Mr. Bartholomay, we put in the coils to keep the beer cooler.

X Q. 196. Then you didn't have the rubber hose before the coils were put in, did you?

A. I am not sure about this. We tried all the first summer to get it in better working order, and which of those was done first I can't say.

X Q. 197. Are you sure about anything about this apparatus?

A. I am sure that when it was in good working order it is as it is now.

600 X Q. 198. When first put in it didn't have the coils?

A. No, sir.

X Q. 199. How long did you use it before the coils were put in?

A. I can't say; it may be one month or two or three months.

X Q. 200. And two or three years?

A. No, sir; months.

X Q. 201. Was it longer than two or three months?

A. I don't know.

X Q. 202. Don't you know anything about the length of time you used it without the coils?

A. I couldn't say now.

X Q. 203. Who put in the coils for you?

A. I am not sure about this. I seen them at Neuhart's place, on West Main street, or East Main street, I guess it is, and I don't recollect if I wanted him to have it done, as he had the first work done, or if I ordered it by Mr. Barr. I ain't sure about this.

X Q. 204. You don't know, then, who put in the coils?

A. I don't know.

X Q. 205. Do you think Barr put them in?

A. It may be he did.

X Q. 206. If he didn't put them in who did?

A. I should think it was Barr.

X Q. 207. If Barr didn't put them in who did put them in?

A. Somebody else, I guess.

X Q. 208. Who was that somebody else?

A. There was Neuhart took the job generally, and he ordered some

work done by Mutschler, and Barr was Mutschler's man, and another man named Powlis, if I am not mistaken, and Powlis, I guess, done it, and I am pretty sure it was ordered by Mutschler and done by some of his men, but who has done it I don't know.

X Q. 209. Mutschler or his men didn't put those rubber pipes on, did they?

A. No, sir.

X Q. 210. You put them on yourself, if they were ever there?

A. Yes, sir.

601 X Q. 211. And you are the only one that knows anything about putting them on?

A. Every one could put them on.

X Q. 212. I asked if any one did except yourself.

A. I put them on.

X Q. 213. This rubber hose was no part of the original apparatus, was it?

A. No, sir; it was not.

X Q. 214. As you first used the apparatus the water ran out through the drip pipes into the buckets in the closet underneath the ice box?

A. Yes, sir; it did.

X Q. 215. How long did you continue to use the apparatus in that way?

A. I can't say.

X Q. 216. Did you continue to use it that way two or three years?

A. I did not.

X Q. 217. Didn't you continue to use it that way three or four months?

A. A couple of months, I suppose it was.

X Q. 218. Did you put the rubber hose on before or after you put the coils in?

A. This I can't say.

X Q. 219. Has anything affected your memory within the last two or three days that you can't remember anything now, and on your direct examination you knew everything?

A. I guess not.

X Q. 220. Yet you can't remember now whether the rubber hose was put on before or after the coils were put in, can you?

A. I cannot.

X Q. 221. Were those three coils put in at one and the same time?

A. Yes, sir; they were.

X Q. 222. How long did those coils remain in?

A. I don't k-ow.

X Q. 22-. What was done after these coils were taken out?

A. The pipes were put flat on the bottom—the beer pipes. They were put on the bottom where the coils were before, and the pipe bent down and laid flat on the bottom.

X Q. 224. Was there any other change made in the apparatus at that time?

A. I think not.

X Q. 225. Do you know whether there was or not?

A. I think there was no other change made.

602 X Q. 226. And how long did you continue to use the apparatus after the coils were taken out?

A. I don't recollect now.

X Q. 227. Don't you recollect that either?

A. When we had the first law suit *J* had some more recollection about it, and now if I referred to the book I might read what I recollected then; but to-day I am not willing to testify to anything else than I recollect to-day or find out by any circumstances or by my book.

X Q. 228. Then you had a better recollection when you gave your testimony in the other cases than you have now?

A. Yes, sir; I had.

X Q. 229. Suppose your present testimony conflicts with your former testimony, which is true or which is false?

A. Oh, I guess it scarcely will, because I wouldn't testify to anything to-day that I am not sure of.

X Q. 230. I don't ask whether it would or not; I asked if it did conflict, your present testimony with your former testimony; which are we to regard as true and which false?

A. I wouldn't answer that question.

X Q. 231. Why won't you?

A. I can't see any reason for it.

X Q. 232. Let the court and myself be the judge of the reason. You are here to answer questions and I want you to answer that question.

A. If I am not sure of anything to-day I would not testify to it.

X Q. 233. Should it appear that your testimony of to-day conflicts with your testimony given on the former occasion, which are we to regard as true?

A. You may do just as you please.

X Q. 234. You can't tell us, then, which is true and which is false?

A. I cannot, and it can't be expected of a man, ten years afterwards, to testify to all such little repairs and so on.

X Q. 235. Now, I agree with you fully, that you don't
603 know anything about this apparatus at this late day, and it is that that I am endeavoring to have you say. Now, isn't it the fact that at this late day you have no distinct recollection of this apparatus?

A. About the apparatus I am sure of, but about the repairs, of course I couldn't say they were made the month before or afterwards.

X Q. 236. Your difficulty, th-n, is fixing the date when this apparatus was changed from time to time, is it?

A. Yes, sir.

X Q. 237. And you also have difficulty in fixing the time when the rubber hose was placed around the beer-supply pipes?

A. I am sure it was done the first summer.

X Q. 238. Then it was done in 1877, wasn't it?

A. Yes, sir.

X Q. 299. Then you say on this occasion that the rubber hose was placed around the beer-supply pipes in the summer of 1877?

A. Yes, sir; I say so.

X Q. 240. Do you remember having testified on your direct examination that the rubber pipes were not put on by you until after the coils were removed?

A. I wasn't sure about the removing of the coils.

X Q. 241. Did you state in your testimony you were not sure about that fact?

A. Well, I don't know; I thought the coils were taken out first, because we had some trouble with them; but now it appears they were left there longer, and winters we didn't use it, and it may be we left it the winter and took it out the next summer. It appears there was a mistake.

X Q. 242. Then you are mistaken in saying that the rubber pipes were not put on until after the coils weere removed, are you?

A. It looks so.

X Q. 243. Is it so or not?

A. Of course. it is so.

X Q. 244. Why is it so?

A. Because I find now, by looking at the book, that the coils were taken out later, as I thought. I thought they were
604 taken out already in 1877 again, and so they were left a longer time than I thought.

X Q. 245. What did you find it, looking at the book?

A. Found when Cassebeer's bill was paid.

X Q. 246. You simply found you paid Cassebeer $11 on the 29th of October, 1878?

A. Yes, sir.

X Q. 247. You don't know what that payment was for, do you?

A. I know it was for different jobs, and included taking out the coils, because, if not the first, it was one of the first jobs, and he might have done some other repairs the same day or on, and I am quite sure taking them out was one of the first jobs.

X Q. 248. About what time in the year 1878 did Cassebeer first work for you?

A. I couldn't say this.

X Q. 249. Can you give the date in 1878 that he took the coils out, assuming he took them out in 1878?

A. I cannot.

X Q. 250. How long before the 29th of October, 1878, was it that he took the coils out, if you know?

A. I don't know.

X Q. 251. Didn't you find by your books that you had paid Cassebeer on the 17th of December, 1879, $13.50?

A. Yes, sir.

X Q. 52. What was that for?

A. It was about half a dozen different jobs; mostly gas work.

X Q. 253. Wasn't any of the bill, which amounted to $13, for gas fittings?

A. The greater part was for gas fittings.

X Q. 254. Do you mean of the bill for $11?

A. No, sir; of the other, $13.50.

X Q. 255. The greater part of the bill $13.50 was for gas fittings?

A. Yes, sir.

X Q. 256. Was any of the bill for $11 for gas fittings?

A. That is what I can't find out.

X Q. 257. How is it that you remember that the bill for
605 $13.50 was mostly for gas fittings when you can't tell what the bill $11 is for?

A. Because we have got the other bill for $13.50.

X Q. 258. You have that bill, have you?

A. Yes, sir.

X Q. 259. And you say that was mostly for gas fittings?

A. Yes, sir; but not for fixtures—gas work. It doesn't show exactly.

X Q. 260. And have you seen that bill for $13.50?

A. Yes, sir; seen it last night.

X Q. 261. Have got it with you?

A. No, sir.

X Q. 262. I wish you would bring it to-morrow morning.

A. All right.

X Q. 263. How do you know that the removal of the coils was not included in this bill of $13.50 that you paid in December, 1870?

A. Because I am sure we didn't have the coils in as long as this.

X Q. 264. That is only your recollection?

A. Yes, sir; that is my recollection. My first recollection was it was taken out in 1877 already.

X Q. 265. Now, you say you are mistaken in the year, don't you?

A. Yes, sir; I am mistaken in the year.

X Q. 266. Since you are mistaken in the year, isn't it just as likely that it was 1879 or 1880 as 1878?

A. It is not, because I am sure we didn't use them a long time.

X Q. 267. Did you use them a year?

A. I couldn't say how long.

X Q. 268. Didn't you say on your former examination you didn't use them only two or three months at the most?

A. It was my impression, and it may be so, because in winter we didn't use them at all.

X Q. 269. So it may be those coils were taken out in 1877. Is that it?

A. It is not possible, because in winter they haven't been used; so it might be they were used the latter part of 1877 and perhaps
a short time in 1878, until we found they didn't work well
606 and took them out. In winter we had nothing to do and no use for it, and so, if I say a couple of months, it was summer months.

X Q. 270. And that is the explanation which you give for the difference, is it?

A. Yes, sir.

X Q. 271. And you remember, do you, of getting a bill of Cassebeer for this $11?

A. I am sure I have, because it is numbered in the book.

X Q. 272. And did that bill specify the taking out of these coils?

A. That I couldn't say now.

X Q. 273. Don't you remember that it did?

A. I suppose I didn't see this bill for these ten years or nine years.

X Q. 274. Is it your recollection that the bill did or did not specify the removal of these coils?

A. I couldn't say.

X Q. 275. Can you say that the work for the removal of these coils was included in that bill?

A. I am sure it is.

X Q. 276. What makes you sure?

A. Because I am sure Cassebeer took it out, and it was taken out not very long after we had put them in, because they worked so poorly.

X Q. 277. When do you say you put them in?

A. I suppose the latter part or middle of the summer of 1877.

X Q. 278. And when do you say you took them out?

A. It appears now, by the book, that was it in 1878 instead of 1877, when my first impression was.

X Q. 279. What time in 1878 does it appear that it was?

A. I can't say; summer of 1878.

X Q. 280. Will you swear it was the summer of 1878?

A. All I have to testify, I guess, is under oath, I should think.

X Q. 281. Will you swear it was in the summer of 1878?

A. I am sure of the date; that it was done in 1878 instead of 1877, as I first thought.

X Q. 282. Was it in the summer of 1878?

607 A. I am not sure of this. Mr. Cassebeer's bills sometimes run about three months and sometimes for about seven or eight months, so if we had the bill we could show exactly when that was done, but I can't show that now.

X Q. 283. Could you show from the bill exactly when it was done if the bill didn't specify the removal of the coils?

A. Then I could not. Sometimes it don't exactly say what kind of work is done.

X Q. 284. When was that beer-cooling apparatus constructed in your saloon?

A. I guess that can best be shown by Mr. Neuhart's bill. I guess it was in the summer of 1877.

X Q. 285. I have made no reference to Neuhart's bill. I asked you when that was constructed.

A. When first put in?

X Q. 286. Yes.

A. That was in the summer of 1877.

X Q. 287. What time in the summer of 1877?

A. I can't recollect now without the bills.

X Q. 288. Was it in the early summer or late summer?

A. I don't know.

X Q. 289. Was it in the summer or fall?

A. I don't know.

X Q. 290. Was it in 1877 at all?

A. It was in 1877.

X Q. 291. How do you know it?

A. I know by looking up the book formerly. I didn't look at it lately, or I would be sure about the month or date.

X Q. 292. You gave the month in your former examination, didn't you?

A. I guess I did. I remember we showed all the bills when it was put in.

X Q. 293. Will you swear at this time when that apparatus was first put into your saloon?

A. I will swear to nothing but to the bills we have and to the book we have.

X Q. 294. What book have you?

A. This book shows the bills, and the bill by Mr. Neuhart and Mutschler, and so on, will show everything.

X Q. 295. Now take this book of yours and refer to where
608 you paid Neuhart the money for the putting in of this apparatus.

A. There appears "Jul- 2nd, Neuhart, $28.80." That is in 1877; and there is July 13th. I suppose this is Mutschler's bill for doing the work—$23.97. That is 1877. We bought glasses of Mr. Mutschler, and this book doesn't show if it was for work or for glasses.

X Q. 296. Mutschler was in the crockery business, wasn't he?

A. Yes, sir; but he had the plumbing, gas-fitting business at the same time.

X Q. 297. And you bought crockery and glassware of him, didn't you?

A. Yes, sir.

X Q. 298. Is there anything on your books to show whether these payments were for plumbing or for crockery or glassware?

A. No, sir; there is not. It would have to be shown by the bills.

X Q. 299. Were you acquainted with Mr. Mutschler before you came to Rochester?

A. No, sir; I was not—yes; I was before; I used to live here. I was acquainted with him when a member of the German school board, and I knew him before.

X Q. 300. Doesn't your book show payments to Mutschler several times during each year from 1876 to 1879?

A. Yes, sir; I guess it does.

X Q. 301. Do you agree with me in stating that the apparatus as put in by Mutschler didn't have rubber hose around the beer-supply pipes?

A. It did not.

X Q. 302. And as Mr. Mutschler left the apparatus so you put it into use at first, didn't you?

A. Mutschler and Neuhart. One furnished one part and one the other, and so it was used first.

X Q. 303. Then it wasn't originally intended to have pipe of any kind surrounding the beer-supply pipes?

A. I guess it was not.

X Q. 304. How long did you use that apparatus before any alteration was made?

A. I couldn't say now.

X Q. 305. What was the size of the upper ice box as originally constructed?

609 A. I think it was about—the width of it about 20 x 28 inches, I should think; either more or less, for I am not sure.

X Q. 306. About 20 x 28, was it?

A. Yes, sir.

X Q. 307. 28 long and 20 deep?

A. Yes, sir.

X Q. 308. How many beer-supply pipes had you?

A. Three.

X Q. 309. And how did those beer-supply pipes enter the upper ice box?

A. They entered into the bottom, just as shown here.

X Q. 310. Don't refer to anything that is shown here, but tell me from your recollection how the beer-supply pipes entered the upper ice box.

A. They entered it by tin pipes.

X Q. 311. What weree these tin pipes?

A. I think they were about an inch wide and a couple of inches below the lower bottom of the ice box and about five inches above it.

X Q. 312. And how many of these tin pipes were there?

A. Three.

X Q. 313. And where were they located?

A. They were located pretty near the rear of the box.

X Q. 314. About the center in the length of the box?

A. Yes, sir; about the center, and, of course, a little apart, each of them.

X Q. 315. And it was through these pipes that the drip went, was it?

A. Yes, sir.

X Q. 316. How far did these tin pipes extend above the bottom of the ice box?

A. I think about five inches.

X Q. 317. And how far below the bottom?

A. A couple of inches; about two or three inches, it might be.

X Q. 318. And then you put the pails in the closet under these drip pipes, did you?

A. Yes, sir; so it was done at first.

X Q. 319. Then before any water would run out there had to be sufficient water in the bottom to overflow the pipe? You

610 stated that the tin pipes extended five or six inches above the bottom?

A. Yes, sir.

X Q. 320. Then before any water could run out there would have to be five or six inches in the bottom of the ice box?

A. Yes, sir.

X Q. 321. Did you ever dip that water out?

A. I never did.

X Q. 322. Did you ever tell your boys to dip it out?

A. I never did.

X Q. 323. Always let it run out into pails?

A. I don't know if it did, but it may be they dipped it out instead of cleaning out the pipes. I had my order given in the right way, but I couldn't say as they were always executed as I had given them, and so it was with the beer-supply pipe, and it may be the same thing with the other pipes.

X Q. 324. Didn't you have an extra pipe with a cock upon it to draw off from the upper ice box?

A. No, sir.

X Q. 325. So if you wanted to get the water below the tin pipes out—to get all the water out—you would have to dip it out?

A. Yes, sir. If you wanted to get it all out, we had to dip it out, of course.

X Q. 326. Was there a separate tin pipe for each beer-supply pipe?

A. There was.

X Q. 327. After the beer-supply pipes passed through these tin pipes what direction did they take?

A. They went backward to the lower ice box.

X Q. 328. They went backward, did they?

A. Yes, sir.

X Q. 329. They were that way at first, were they?

A. I don't know that I get it right. I mean that they went down, but not straight, and went a little ways back, because the lower ice-house wasn't right under the upper, but in the rear of it.

X Q. 330. Was any part of the lower ice box under the upper ice box?

A. No, sir.

X Q. 331. Did you ever change the direction of the beer-supply pipes?

A. I did not; if it was done, it was done without my knowing about it.

611 X Q. 332. You didn't change the direction of the beer-supply pipes in order to put these rubber pipes around?

A. No, sir; I did not.

X Q. 333. As the apparatus was first put in did the beer-supply pipes go right down to the floor?

A. In the cellar, do you mean?

X Q. 334. The floor on which the upper ice box stood.

A. Yes, sir; they went right to the floor.

X Q. 325. What was the height of the closet under the upper ice box?

A. I think it was about two feet.

X Q. 336. Wasn't it three or four feet?
A. No, sir; it wasn't as high as this.
X Q. 337. About two feet, you think?
A. Yes, sir.
X Q. 338. From the floor to the bottom of the ice box?
A. Yes, sir.
X Q. 339. The beer-supply pipes came through the floor of the upper ice box?
A. Yes, sir.
X Q. 340. Down to the floor of the saloon?
A. Yes, sir.
X Q. 341. Then what direction did the beer-supply pipes take after going through the floor?
A. They went more backward, yet right in the one corner of the lower ice-house.
X Q. 342. Went through one side of the ice box, did it?
A. Yes, sir.
X Q. 343. Go through the front or side of the ice box?
A. The front of the ice box—the front corner.
X Q. 344. It wasn't the side, then?
A. No, sir; it wasn't the side.
X Q. 345. When you put the rubber hose on, as you claim to have done, did you have to enlarge this hole through which the beer-supply pipes entered the lower ice box?
A. Yes, sir; had to enlarge it a little.
X Q. 346. You remember enlarging it?
A. I don't recollect exactly; but I don't think it was big enough, and had to enlarge it a little.
X Q. 347. That is, you think it must have been enlarged?
A. Yes, sir.
612 X Q. 348. Did you ever think of that before to-day?
A. I was sure the hole was big enough, but I think it wasn't big enough to get it through before, for it took more room to have the hose on as to have the beer pipes on.
X Q. 349. So you remember enlarging that hole, do you?
A. Yes, sir; I guess I did it myself.
X Q. 350. Do you or not remember enlarging that hole?
A. Well, I guess I enlarged it, but I am not quite sure. I guess I had to do it, but I can't recollect just now if the holes was big enough or not. I know there was a pretty large hole to put it through, and if it was before or not, I don't recollect just now.
X Q. 351. How large was that hole into the lower ice box?
A. I guess it was about five inches, I should think; not exactly square, but about five inches big.
X Q. 352. You think it was about five inches square, do you?
A. Yes, sir.
X Q. 353. And how large was it before you put the rubber hose on the beer-supply pipes?
A. I am not sure about this.
X Q. 354. Your recollection is not very clear about that, is it?
A. No, sir.

X Q. 355. If rubber hose were ever put around the beer-supply pipes, you put them around yourself, didn't you?

A. Yes, sir.

X Q. 336. And you did that yourself without the assistance of anybody?

A. I did, sir.

X. Q. 357. What was the height of the lower ice box?

A. They run up to the ceiling of the cellar, I think, about eight feet, or between seven and eight feet.

X Q. 358. Do you know what was the length of the beer-supply pipes?

A. According to the height of the cellar and that part of the ice box, I should think between ten and twelve feet.

X Q. 359. That is, it would have taken about ten or twelve
613 feet of pipe to reach from where the kegs were in the lower cellar to the upper ice box?

A. Yes, sir.

X Q. 360. In what part of the lower ice box were the kegs kept?

A. Just on the same side where those beer pipes had gone down.

X Q. 361. So that as the beer-supply pipes come through and into the ice box the pipes went straight to the kegs; is that it?

A. Yes, sir; they did, but they had pieces of hose on it yet.

X Q. 362. Then the beer-supply pipes were about ten to twelve feet long without the pieces of hose?

A. I should think so.

X Q 363. Had each beer-supply pipe a separate hose?

A. Yes, sir; they have.

X Q. 364. And how long was each piece of hose?

A. I guess the pieces of hose are about three feet.

X Q. 365. About three feet long?

A. Yes, sir.

X Q. 366. And one end was fastened on the beer-supply pipe?

A. Yes, sir.

X Q. 367. And how was it fastened onto the end of the beer-supply pipes?

A. By a piece of wire.

X Q. 368. Wired on?

A. Yes, sir.

X Q. 369. And the other end of the rubber hose, where was that attached?

A. The other end? There was a coupling on to connect with the faucet.

X Q. 370. And each beer-supply pipe had its piece of rubber pipe wired onto the end of the beer-supply pipe and coupled onto the faucet of the keg?

A. Yes, sir.

X Q. 371. What was the size of the beer-supply pipes?

A. I think they were about half an inch.

X Q. 372. Half an inch: inside diameter?

A. I think they were about half an inch outside.

X Q. 373. Outside diameter?

A. I should say so.

— Q. 374. And did the rubber hose slip tightly over the beer-supply pipes?

A. Yes, sir.

X Q. 375. Had trouble to get them on and off, hadn't you?

614 A. Had no trouble, but had to take the wire off, and could take them off by taking off the wire and afterwards putting it on. We had to put on the wire again to make them hold.

X Q. 376. But in order to slip the hose over the end of the beer-supply pipe it required some little exertion, didn't it?

A. No, sir; it didn't make much trouble.

X Q. 377. It fitted tightly, didn't it?

A. Yes, sir; fit pretty tight.

X Q. 378. What was the size of the rubber pipe?

A. They had several names for it. I don't know the name of it, but just wide enough to get over the pipes so about half an inch inside and a little thicker.

X Q. 379. Did Mutschler furnish this rubber pipe when he put in the apparatus?

A. The first parts were put on right off; yes, sir.

X Q. 380. Then Mutschler furnished these three-feet pieces of rubber pipe that were attached to the end of the beer-supply pipe and connected it with the faucet?

A. I suppose Mutschler did. Neuhart might have furnished the faucet and might have furnished the hose, but I am not sure about this.

X Q. 381. But one or the other of them left the apparatus complete with this hose on?

A. Yes, sir.

X Q. 382. You had nothing to do with the purchase of that rubber pipe, had you?

A. No, sir; I had not.

X Q. 383. What part of the cellar was the lower ice box in?

A. It was in the southwest corner.

X Q. 384. In what direction was it as you came down the steps from the saloon floor?

A. We never used the steps leading down or had no steps from the saloon leading down. We had to go down outside. There was stairs leading down outside in the rear of the saloon, and, coming down, it was just at the right-hand side.

X Q. 385. Then you had to go outdoors and go down a pair of steps, did you?

A. Yes, sir.

615 X Q. 386. There was no pair of steps leading from the first floor of the house down into the cellar?

A. No, sir; there was not.

X Q. 387. And in what direction as you entered the cellar from these outside steps was the ice box?

A. On the right hand side, just by the door.

X Q. 388. How was it relatively to the river?

A. It was on the river side.

X Q. 389. Was it in one corner of the cellar or about midway of the cellar?

A. It was at one corner.

X Q. 390. What, if anything, was adjoining this lower ice box?

A. There was next to it, from the ice box to the front of the building, there was a wine cellar.

X Q. 391. And was that wine cellar adjoining the ice box?

A. Yes, sir.

X Q. 392. On one side of it?

A. Yes, sir.

X Q. 393. And the wine cellar was boxed off the same as the ice box was boxed off, wasn't it?

A. No, sir; it was closed off with strips about two inches wide or four inches wide.

X Q. 395. Closed and locked?

A. Yes, sir.

X Q. 396. And in there you kept the wine?

A. Yes, sir.

X Q. 397. As the beer-supply pipes came down didn't they pass into this wine cellar?

A. They did not.

X Q. 398. In what direction did they pass with relation to the wine cellar?

A. They ran in the ice house just on the corner where the wine cellar commenced.

X Q. 399½. But not inside of the wine cellar?

A. No, sir.

X Q. 399. Then any one going into the lower ice box could see the beer-supply pipes as they came down, couldn't they?

A. I should think so, if any one paid attention to it, but there was different pipes—water and gas, and so on.

616 X Q. 400. Do any other pipes come down with the beer-supply pipes?

A. Not exactly with them, but there was air pipes, and water pipes, and gas pipes, all running under the ceiling of the cellar.

X Q. 401. Any one who took the trouble to look could see the beer-supply pipes as they came down-stairs?

A. I guess any one who intended to examine it could see them.

X Q. 402. How far from the door of the lower ice box did these pipes enter the lower ice box?

A. I don't recollect how far the door was from the one end. It was more at one end and it may have been about seven feet from the door.

X Q. 403. These beer-supply pipes, as they came down-stairs, were in no way inclosed, were they?

A. They were not inclosed at first before we put in the rubber hose, but they were not covered up except as hose.

X Q. 404. Then at first the beer-supply pipes came down and passed through the cellar and into the lower ice box without having any covering upon them.

A. Yes, sir.

X Q. 405. Did they ever have any covering upon them except the rubber pipe which you claim to have put around them?

A. I don't think they ever had anything else that was put on.

X Q. 406. They were never boxed in, were they?

A. I think not.

X Q. 407. You never boxed them in, did you?

A. No.

M Q. 408. Have you described the construction and arrangement of the beer-drawing apparatus of yours as it was put in and before you made any repairs?

A. I think I have.

X Q. 409. State exactly what repairs you ever made or caused to be made to that beer-drawing apparatus after it was put in?

A. About the apparatus I guess there was many repairs to be done. Sometimes the pipes had to be soldered up and there
617 was many other repairs, and very often had to do that.

X Q. 410. Do you claim to have done anything to that apparatus besides putting the rubber pipe on?

A. I had more to do with it, but, of course, soldering or something like this wanted a tinsmith or plumber, and I couldn't do it, but I tried to do what I could do.

X Q. 411. The only thing that you personally did was the putting on of the rubber pipes, then?

A. Yes, sir; and took the hose off in the cellar sometimes and put new ones on, but the other repairs I couldn't do.

X Q. 412. When you took the hose off in the cellar do you there refer to the hose that was on the end of the beer-supply pipe and connected with the faucet?

A. Yes, sir; I had to take them off sometimes.

X Q. 413. And replace them with new ones?

A. Yes, sir.

X Q. 414. Where did you get the new ones?

A. I don't recollect now. I guess some of them was sent to buy it, and where they bought it I don't know. It was a small amount only, and generally sent them with a dollar or so to get something, and had them bought, and didn't care where it was bought.

X Q. 415. Have you any entry in your book showing the purchase of rubber hose?

A. I scarcely think there is.

X Q. 416. You don't think there is?

A. No, sir.

X Q. 417. And you can't remember where you bought hose to replace the rubber hose that connected the end of the beer-supply pipe with the faucet?

A. I couldn't recollect; no, sir; because I don't think I bought it myself. I might have done so, and might have sent some of the men.

X Q. 418. Do you remember of ever having replaced those rubber hose yourself in the cellar?

A. I think I have. I might be mistaken, but I think I have put them on myself.

618 X Q. 419. You are certain that you put the rubber hose around the beer-supply pipes yourself, aren't you?

A. The rubber hose I know I put on myself; yes, sir.

X Q. 420. You know, then, that you put the rubber hose around the beer-supply pipe yourself?

A. Yes, sir.

X Q. 421. And you did that by just bending it over?

A. Yes, sir.

X Q. 422. And following the direction of the beer-supply pipes?

A. Yes, sir.

X Q. 423. You didn't take the beer-supply pipes out, did you?

A. I did not.

X Q. 424. You simply slipped it over the beer-supply pipes?

A. Yes, sir.

X Q. 425. Did you start first in the cellar?

A. Yes, sir.

X Q. 426. Or start upstairs first?

A. It was started in the cellar. We took the wire off and put this hose that was so much wider we could put it over very easy.

X Q. 427. How much wider was it?

A. I guess it was about twice as big as the other one.

X Q. 428. What was the diameter of the rubber hose that you slipped over the beer-supply pipes?

A. I think they were about an inch. I don't know whether an inch and a quarter outside or an inch and a half, but they were wide enough to get over the tin pipes in the other ice box.

X Q. 419. And you did all that yourself?

A. Yes, sir.

X Q. 430. So that really you are the only person who can testify as to your putting on those rubber pipes?

A. Well, I suppose some others have seen it afterwards, but when I done it there was nobody else to help, because it was an easy job.

X Q. 431. That is what I mean—that is, that you are the one only person who can swear to putting on of those pipes, no one having seen you do it?

619 A. No one see me put it on, I guess.

X Q. 432. How far did these rubber pipes extend into the lower cellar?

A. They just went into the ice box perhaps a couple of inches.

X Q. 433. Do you think they extended as much as a couple of inches into the lower ice box?

A. I think so; just about.

X Q. 434. And how did you fasten the upper end of the rubber hose?

A. I didn't need no wire, because they didn't go on so easy, and so they catched without putting any wire through at all, and just slipped over the tin pipes in the upper box.

X Q. 435. How long was each of those rubber pipes surrounding the beer-supply pipes?

A. According to the lower part of the upper ice box and a little

room in the cellar and going through the side of the ice box, they must have been three or four feet, I should think.

X Q. 436. Do you remember how long they were?

A. No, sir; I didn't take no measure, but I think they were between three or four feet.

X Q. 437. Never measured them?

A. No, sir.

X Q. 438. And you can't tell how long they were?

A. No, sir; all I know is according to the apparatus, and I know how long they had to be.

X Q. 439. Did this rubber fit close up against the bottom of the lower ice box?

A. I am not sure that they just came up to the bottom, and it may be there was a little left of the tin pipe, but not much of it.

X Q. 440. Do you remember whether there was any left or not?

A. I think there scarcely was, but I couldn't say how if there was half an inch left or not, and I tried to put them on as close as possible, and it may be I was troubled and couldn't get to the bottom of the ice box.

X Q. 441. Where did you get the rubber hose for that purpose?

A. This was rubber hose we had, and I suppose I took the idea to put them on; some water hose we had there.

620 X Q. 442. Hose that you had for sprinkling?

A. Yes, sir.

X Q. 443. And you took that old hose?

A. Yes, sir.

X Q. 444. How long have you had this old hose?

A. I can't recollect; I guess we had it from the day we commenced business there.

X Q. 445. Had you much of it?

A. Had a pretty long pipe of it.

X Q. 446. And you took that long piece and cut it up?

A. Yes, sir; it was in a pretty bad condition; just good enough for such a purpose as this.

X Q. 449. What use had you made of this rubber hose before?

A. We had used it for sprinkling at first.

X Q. 448. Did you have the city water in your place?

A. Yes, sir; we had.

X Q. 449. And this hose you used in connection with the city water?

A. Yes, sir.

X Q. 450. You had hydrants and plugs form the city works, had you?

A. Yes, sir.

X Q. 451. Do you know where you bought this rubber hose originally?

A. I think we didn't buy this at all; I guess we found it on the place, and if it was Mr. Whitney's or whose, I don't know, but I am quite sure we had to buy another one pretty soon, and this was old hose that was there.

X Q. 452. And then you bought new hose?

A. Yes, sir.

X Q. 453. How much did you buy and from whom did you buy it?

A. I am not sure, but I guess we had the first one sent from New York. I guess the first we bought was ordered in New York and got it about half the price it cost here.

X Q. 454. Had you in your saloon the ordinary city hydrant for getting water?

A. In the saloon we used the water in the bar and driving this pump and everything else.

621 X Q. 455. You got that all from the city water works, did you?

A. Yes, sir.

X Q. 456. The ordinary hydrant?

A. Yes, sir.

X Q. 457. Going back to the apparatus as originally put in, can't you tell us how long you used it before making any repairs to it?

A. No, sir; I couldn't tell now.

X Q. 458. Can't you tell when you first began to ussi-g this apparatus as originally put in?

A. I am pretty sure we used it right after it was finished, but the month or date I couldn't fix otherwise than by bills put on in the books, and by this I find it was in 1877, and I was quite sure before it was in 1877, but the month or so I couldn't say, but the *the* bills showing, I think it was quite soon after it was finished we used it.

X Q. 459. You don't mean bills, do you?

A. I mean the machine we used—the apparatus and not bills.

X Q. 460. You said you fixed it at 1877 when you commenced using this apparatus, by reference to your books.

A. Yes, sir; and the bills.

X Q. 461. What bills?

A. The bills that were connected with the entries in the book.

X Q. 462. Have you got these bills?

A. I am quite sure we have not got those bills.

X Q. 463. You have got the bills showing when Neuhart put that apparatus in, have you?

A. Yes, sir; I think so.

X Q. 464. Will you produce them to-morrow morning?

A. Mr. Sullivan, I think, has got them.

X Q. 465. If they are in your control you will produce them, will you?

A. Yes, sir.

X Q. 466. How long did you use that apparatus before you made any change?

A. I couldn't say how many months; I judged I had made all those changes the first summer, but, as it now appears that some of them was done the summer afterwards, I can't say whether

622 one or the other alteration was made a little before or afterwards.

X Q. 467. Wasn't the first alteration the putting in of the coils?

A. I guess the first was putting in of the coils.

X Q. 468. What was the second alteration?

A. I think the second thing was to put on those rubber hose. My first impression was we had taken out those coils in a very short time because they complained of the beer tasting poorly, but I was mistaken and we left them in for a longer time, as my recollection was.

X Q. 469. You stated that it was at Mr. Bartholomay's advice that you put the coils in. Is that your recollection?

A. That is my recollection; yes, sir.

X Q. 470. Give Mr. Bartholomay's full name, will you?

A. I guess Henry is his first name.

X Q. 471. He is the brewer here, is he?

A. Yes, sir.

X Q. 472. He knew of this apparatus of yours, did he?

A. Yes, sir.

X Q. 473 On how many different occasions did Mr. Bartholomay examine this apparatus of yours?

A. I don't think he ever examined it, but if he wasn't satisfied with his beer he always tried to have me improve it, of course, on account of getting his beer better.

X Q. 474. And it was owing to the fact that he was not satisfied with the beer that he advised you to put the coils in?

A. Yes, sir.

X Q. 475. When he advised you to put the coils in he looked at the apparatus, didn't he?

A. I don't think so and I don't recollect that he ever looked into it.

X Q. 476. How did he come to advise you in regard to the coils?

A. I suppose he wasn't satisfied with his beer. We sold his beer and he tried to have it as good as possible.

X Q. 477. You are satisfied, are you not, that the rubber
623 pipes were not around the beer-supply pipes when the coils were put in?

A. I am not sure about this and I couldu't say if the coils were put in first or the rubber pieces put on first.

X Q. 478. Are you sure of anything aside from the fact that the rubber hose were there?

A. I am sure about the apparatus as it was put in at first, and I am sure we always tried to improve it.

X Q. 479. But you are not sure of anything except the apparatus as it was originally put in; is that it?

A. I am quite sure how it was when we put it in and I am just as sure how it was when we took it out, but about the time to a couple of months when any alterations were made I am not sure.

X Q. 480. When did you take it out?

A. We took it out when we moved to Germania hall. We were at Falls Field seven years and commencing in 1876. It was 1883 when we took it out.

X Q. 481. And you are sure when it was put in and when it was taken out?

A. Yes, sir.

X Q. 482. Those are the two things that you are sure of?

A. Yes, sir.

X Q. 483. Did you continue to use this apparatus until you left Falls Field?

A. I did not.

X Q. 484. How long before leaving did you discontinue its use?

A. I am not sure about this.

X Q. 485. Can you tell us about when you stopped using the apparatus?

A. I cannot.

X Q. 486. As I understand you, your great difficulty is to recollect what changes were made and when they were made between the dates when the original apparatus was put in and when it was taken out?

A. I am sure about all the alterations that were made, but only to the time, I am not quite sure if they were made a little sooner or later.

X Q. 487. Is there any way in which you can recall to mind when you stopped using this apparatus?

A. I scarcely can, because the last six months we scarcely did any business at all there.

624 X Q. 488. How high do you say the lower ice box was?

A. It reached to the cellar ceiling, and I should think the cellar was between seven and eight feet high.

X Q. 489. Then you would say the lower ice box was between seven and eight feet high, would you?

A. Reached up to the ceiling, and I think it was between seven and eight feet.

X Q. 490. How far below the floor did the beer-supply pipes enter the lower ice box?

A. I am not quite sure if all the same length. I think the pipes came down to about where the kegs were laying and within a couple of feet of the India-rubber hose, and I should think the pipes came down to about two feet from the bottom of the lower ice box.

X Q. 491. How far from the top of the lower ice box was the hole through which the beer-supply pipes passed?

A. It was nearly at the top of it.

X Q. 492. As near the top as it was possible to get?

A. I think about as near as possible.

X Q. 493. How tall are you?

A. I am not sure.

X Q. 494. Will you stand up while I have you measured?

A. Yes, sir.

X Q. 495. And now, having been measured, how tall do you find yourself?

A. Well, if the measure is right, it is about five feet and a half.

X Q. 496. Now, Mr. Meinhard, stand up again and put up your right hand until I see how far up you can reach.

(The measurement was taken—six feet eight and a half.)

X Q. 497. Now, do you pretend to tell us that you alone put that rubber hose over the beer-supply pipes?

A. Yes, sir.

X Q. 498. And brought it up to the upper ice box?

A. Yes, sir.

X Q. 499. You did that alone?

A. Yes, sir.

X Q. 500. After you put these coils in upon Mr. Bartholomay's advice did he come to see them?

625 A. I think not. As I said, I don't recollect that he ever looked into it. He only complained of the beer if it wasn't to his taste.

X Q. 501. How did he come to tell you to put in these coils if he never saw your beer apparatus?

A. He had seen them at Neuhart's before, I suppose.

X Q. 502. He knew you had one in like Neuhart's?

A. No, sir; he furnished the beer for Neuhart's and he was interested in it, and so he got me to go and see Neuhart's and have it done the same way.

X Q. 503. You went and saw Neuhart, did you?

A. Yes, sir.

X Q. 504. And then went and had the coils put in?

A. Yes, sir.

X Q. 506. Neuhart didn't have any rubber hose or outside pipe around his beer-supply pipe, did he?

A. I didn't look at his apparatus in the cellar at all.

X Q 507. Mr. Bartholomay often at your place?

A. He was at that time.

X Q. 508. How often in 1877, 1878, and 1879, a year, did he use to come there?

A. Perhaps twice a week, but I am not sure of it.

X Q. 509. Did you take his beer at that time?

A. Yes, sir.

X Q. 510. How many kegs per week did you take at that time?

A. I don't know how many kegs, but I guess we sold about $500 worth a month. I think so, but I am not quite sure of *it*.

X Q. 511. How many kegs of beer did your lower ice box hold?

A. I guess there was room enough for fifty or sixty kegs.

X Q. 512. Did you usually keep it well filed?

A. Just according to the business we intended to do. On common week days we had a small business, but on some festivals and picnics we sometimes sold a hundred and more than that.

X Q. 513. And Sundays—that was a big day with you, wasn't it?

A. It was sometimes.

626 X Q. 514. Doesn't the book which you produce here show that Sunday was the biggest day of the week?

A. Sometimes it was, but it wasn't the biggest, and on some occasions we took in ten times as much as Sundays.

X Q. 515. But generally Sunday was your largest day, wasn't it?

A. Yes, sir.

X Q. 516. How were the kegs put into the cellar?

A. We had a kind of a slide in front of the building, and the peddlers would roll it down; and sometimes the peddlers themselves, and might have been on some occasions our man, took them in the ice-house; but usually the peddlers—the drivers who delivered the beer—put it in the ice-house. It was their business to do it, but sometimes our man put it in.

X Q. 517. But it was their business to put it into the lower ice box?

A. Yes, sir.

X Q. 518. And usually they did that?

A. Yes, sir.

X Q. 519. Who was Bartholomay's driver in 1877?

A. I never knew the name of any one of them except the first name.

X Q. 520. Wasn't John V. Englert one of the drivers?

A. I recollect that he was one of them for a little while, I guess, but not very long. I am very sure there was a short time that he was.

X Q. 521. When was it Englert was the driver?

A. I can't say.

X Q. 522. Was it in 1877 and 1878?

A. I couldn't say the year. I wasn't interested in Bartholomay's man.

X Q. 523. When Englert came there with the beer he slid the kegs into the cellar, didn't he?

A. I don't know if he came in summer or winter. I only say the general rule was they slid it down; but how this was I don't know.

X Q. 524. You don't know how long Englert was driving for Bartholomay?

A. I have no idea.

X Q. 525. Then you can't say whether Englert did or did not see your apparatus?

A. I cannot; there is only one sure—that he was a driver
627 for a short time *time*, and I can't say whether a couple of months or a couple of weeks.

X Q. 526. Or a couple of years?

A. No, sir; it wasn't a couple of years.

X Q. 527. Do you think Englert was driver for six months?

A. I think not.

X Q. 528. Do you think he was driver for three months?

A. He might have been three.

X Q. 529. Was he driver in the summer or winter?

A. I don't recollect.

X Q. 530. You say you didn't use this apparatus in the winter; is that so?

A. We didn't use it in winter as in summer, but, of course, if you extend the winter, perhaps from October to the 1st of May, we might have used it part of it; but, as a rule, I think, we didn't use it in winter or the cold winter months.

X Q. 531. What months would you say you didn't use in?

A. I am not sure about this. We always had to do this accord-

ing to the best judgment, and how we did I don't know to-day. We always tried to save as much trouble and expense as possible.

X Q. 532. Did Mr. Gilbert know of your putting this rubber hose around the beer-supply pipe?

A. I couldn't say what he knows about it. He is a very stout and fat man and he never could attend to any such business. He, perhaps, could lift out a glass of beer and attend to customers, but to do any such thing it was impossible for him, and I suppose he scarcely ever entered the cellar.

X Q. 533. How many times a year do you suppose he went into the cellar?

A. I couldn't say if he went in once or twice.

X Q. 534. Is it your idea that Gilbert did not know of your putting this rubber hose around the beer-supply pipe?

A. I can't say.

X Q. 535. You never talked with him about it, did you?

A. No, sir.

628 X Q. 536. Did you ever talk with anybody else about it; and, if so, whom?

A. I don't know if I did or not. I talked freely about everything and about this whole matter with any one that there was a chance to, but I can't say that I had a special reason to talk to any one about it.

X Q. 537. You don't remember, then, of mentioning it to any one?

A. I don't know anything about it.

X Q. 538. How long did you use this apparatus after you put the rubber hose around the beer-supply pipes?

A. I am not quite sure about this, but a couple of years, anyhow.

X Q. 539. You think you used it about two years?

A. It may have been two or three. I am not sure about this.

X Q. 540. Might it not have been only one year?

A. No, sir; it was longer than that.

X Q. 541. How much longer, according to your best judgment and recollection?

A. I couldn't say now. I have no recollection when we did give it up. It might have been a year or two years before we moved and left the place. I am not sure about this at all.

X Q. 542. How many years did you use it without reference to the time you gave it up?

A. That is just about the same thing that I am not sure of. I think we used it from when it was put in in 1877—I think we used it up to 1880 or 1881. I am not sure of this, when we did give it up.

X Q. 543 Don't you think you continued to use it until you left Falls Field?

A. We took it apart—parts of it—and put in there at Germania hall quite a new kind of apparatus that has nothing to do with this at all.

X Q. 544. When did you take it apart?

A. When we left, about the last days of March, or was seven years, so it would be March, 1883, I guess.

X Q. 545. Did you remove any parts of it until you took it all out when you removed?

A. We removed the whole thing, and moved the whole
629 thing, and was together some time yet until we had a chance to use part of it, and used part of the lead pipes and used the faucets, but for the other stuff we had no occasion to use that there at all.

X Q. 546. Did you use that apparatus as late as 1881?

A. I don't know anything about this.

X Q. 547. When you put the rubber hose around the beer-supply pipes, did you make any other change?

A. I don't recollect any other change. It was just to keep the water off the floor, and I don't recollect that we at the same time had a reason to make any other change.

X Q. 548. After you put the rubber hose around the beer-supply pipes any one looking at them in the cellar would see the rubber, wouldn't they?

A. If any one paid any attention to it might have seen it.

X Q. 549. They were not boxed in any way, were they?

A. They were not.

X Q. 550. Did you ever use anything else other than the rubber hose to surround the beer-supply pipes?

A. I never did.

X Q. 551. So that if you didn't have the rubber hose around the beer-supply pipes you didn't have anything around them?

A. No, sir.

X Q. 552. That is the fact, isn't it?

A. That is so.

X Q. 553. Did you leave the rubber hose that you put around the beer-supply pipe on until you took the apparatus out?

A. We had it on for some time afterwards, yet the whole upper ice box with faucets and everything and pipe and rubber on was laying at Germania hall for a little while, until we used part of it.

X Q. 554. At no time after putting the rubber hose around the beer-supply pipes did you take it off; is that it?

A. I don't recollect if I ever took it off or not.

X Q. 555. It is your recollection that you continued to use that same rubber hose until the apparatus was taken out, is it?

A. I am not sure about this; it may have been changed,
630 but I don't recollect when it was ever changed, or if I changed it or somebody else, and I couldn't say.

X Q. 556. Then it is your best recollection that the rubber hose which you originally put around the beer-supply pipes was used until the apparatus was taken out, is it?

A. I couldn't say if it was or was not.

X Q. 557. D- you remember of ever taking off this rubber hose after putting them on?

A. I don't recollect about this.

X Q. 558. You certainly never substituted new rubber hose for the old, did you?

A. I don't know anything about it; if any other parts was put on I am quite sure we took some of the old pieces, yet——

X Q. 559. You don't remember ever buying any new rubber hose for this purpose, do you?

—. I do not.

X Q. 560. And you don't remember ever using any rubber hose except that which you originally put on, do you?

A. I do not.

X Q. 561. And you don't know of any one else ever having put rubber hose around the beer-supply pipes but yourself, do you?

—. No, sir.

X Q. 562. Would any one around your place have attempted to remove the rubber hose around the beer-supply pipes or substituted others without your knowledge?

A. It might have been; there might have been some of the men take them off sometimes and put other pieces on, but I don't recollect now.

X Q. 563. If anything of the kind was done you didn't know it?

A. No, sir; I didn't know it.

X Q. 564. When do you say you took this apparatus out?

A. It was shortly before we moved; in 1883, I guess it was.

X Q. 565. Who helped you take it out?

A. We had some man; there was young Stief was one of them.

X Q. 566. Young Stief was working for you at that time, wasn't he?

A. He was working years ago when he was a young boy, and on some occasions he went to some other place, and afterwards we always had him.

631 X Q. 567. You refer to Albert Stief?

A. Yes, sir.

X Q. 568. And wasn't he your bartender at the time this apparatus was removed?

A. I don't think he was.

X Q. 569. How did he come there at that time?

A. No one would expect me to remove all those things alone, of course.

X Q. 570. How did it happen that Albert Stief was the one you got to assist you?

A. Because we always like to have him if we could get him, and he was the best young man we could have, because he wasn't drinking like a good many others.

X Q. 571. He was a good young man, was he?

A. Yes, sir.

X Q. 572. You didn't have many very good young men about your place, did you?

A. I did not.

X Q. 573. Name the especially bad ones that you had.

A. Well, that is scarcely proper, I should think, but if you want me to mention one that was a very good boy when he commenced working there was Lou Keuhler, but we had him in the bar-room

and when he had a chance he got drunk right off, and so we had many others.

X Q. 574. Wasn't that Otto Schantz a bad fellow?

A. He was a very good one when we took him and afterwards he took to drinking and like the others—that is, I call a bad bartender if he drinks.

X Q. 575. Your saloon wasn't a very good school?

A. No, sir; and I guess none is, either.

X Q. 576. How about Raymond Stief?

A. He was a good boy.

X Q. 577. He generally kept his head about him, did he?

A. Yes, sir.

X Q. 578. How was it with Otto Hahn?

A. He was our barkeeper on picnic days; he never was in the saloon.

X Q. 579. He was one of the lads about the place?

A. Only working on Sundays. He was working in the shoe shop, I think. He never worked in the front bar-room.

632 X Q. 580. I noticed in your affidavit you used the expression "lads" several times. What do you mean by a lad?

A. Any young fellow between fourteen and seventeen years or eighteen.

X Q. 581. Fourteen and seventeen is what you term a lad?

A. Yes, sir.

X Q. 582. Was Albert Stief a lad in 1877 and 1878?

A. I might call him a boy; I guess he commenced there when he was about fourteen years old.

X Q. 583. Was he a barkeeper then?

A. We scarcely had any regular barkeepers and they had to work about the place.

X Q. 584. Was Albert Stief, when he entered your employ at the age of fourteen, a barkeeper?

A. I couldn't answer such, and we only had one and that was Fred. Guenther; he was the only regular barkeeper we ever had.

X Q. 585. Who was the only regular barkeeper?

A. Fred. Guenther, because he would work only behind the bar and do nothing else.

X Q. 586. Where is Gutacker now?

A. He is here in the city.

X Q. 587. What kind of a man is he?

A. Well, he is a pretty nice man when he isn't drunk.

X Q. 588. Isn't he drunk the most of the time?

A. No, sir; I guess not; he is very useful in some occasions; at Germania hall he is a very good hand.

X Q. 589. Can you tell me when you saw him sober last?

A. Lately I guess he is all right; he has got in a certain place now about six months and that shows he is all right now.

X Q. 590. When did Gutacker stop working for you?

A. I guess we have him only; I couldn't say how many months regular in 1876.

X Q. 591. You didn't have him after you had this apparatus in, do you?

A. We never had him regular, but we had him on some occasions when we did business in the rear hall.

633 X Q. 592. You had him tending bar in the hall?

A. Yes, sir.

X Q. 593. But not in the saloon proper?

A. No, sir; except in 1876; when we commenced we had him as a regular barkeeper.

X Q. 594. Did Gutacker and Guenther both work there together?

A. I think not, but it might have been; they were only engaged first to set up pins on the bowling alley.

X Q. 595. He wasn't barkeeper when Guthacker was barkeeper?

A. All the others were never regular barkeepers and had to do all kinds of work. I call a regular barkeeper a man who tends to his bar only and has business at the bar, but we scarcely ever had those, and sent Guenther away and wouldn't have no man that wouldn't tend to his bar.

X Q. 596. Who was the older, Raymond or Albert Stief?

A. Raymond.

X Q. 597. How much older?

A. About three or four years.

X Q. 598. You kept your saloon open on Sundays, didn't you?

A. Yes, sir; the rear hall—the concert hall.

X Q. 599. Didn't you keep the saloon open on Sundays?

A. We might have had it open in the forenoon, but I am quite sure we closed it in the afternoon when we had concerts in the rear hall.

X Q. 600. Didn't you always keep your saloon open on Sundays until the concert started?

—. We had concerts twice Sundays, I think, when we commenced with concerts, and had them as long as we could make it pay.

X Q. 601. What time did your concert open Sundays?

A. About three o'clock in the afternoon.

X Q. 602. And then had an evening concert?

A. Yes, sir.

X Q. 603. What time did that commence?

A. At eight.

X Q. 604. Didn't you always keep the saloon open on Sun-
634 days until the concert commenced in the evening?

A. In the forenoon generally kept it open.

X Q. 605. You always kept the saloon open on Sunday during the forenoon?

A. Yes, sir.

X Q. 606. Didn't you always keep it open Sundays until the evening concert?

A. No, sir, we didn't; as a general rule, we closed it right after dinner and then opened the hall for the concert.

X Q. 607. That would make it about three o'clock in the afternoon when you closed the saloon?

A. No, sir; opened the hall about two or half past one, and when we opened the hall we closed the saloon.

X Q. 608. Didn't you open the saloon again after the afternoon concert closed and kept it open until the evening concert?

A. No, sir; we did not.

X Q. 609. Never did that?

A. No, sir.

X Q. 610. Now suppose Albert Stief has testified under oath that you always kept the saloon open on Sundays until the opening of the evening concert, would you say that was the truth or a lie?

A. If he testified so he was mistaken, or else it might have been done on single occasions, but as a rule I say after we closed the saloon it wasn't opened again, but on single occasions it is possible it was done.

X Q. 611. If Albert Stief, whom you have testified was with you for years, has testified under oath that you always kept the saloon open on Sundays until the opening of the evening concert, did he tell the truth or tell a lie?

A. Then he was mistaken, I suppose.

X Q. 612. Did you understand that I used the word "lie" and not "mistaken"?

A. Well, I can't help it. You can call me a liar if you please, for you have the law in your hands.

X Q. 613. Did Albert Stief tell the truth or did he not tell the truth when he testified that the saloon was always open Sundays until evening?

A. He cannot testify it was always open because he wasn't there all the time.

635 X Q. 614. You have testified that the saloon was always open Sundays until the concert hall was open, at 1 or 2 o'clock?

A. Yes, sir, as a rule; but I wouldn't say that there was no exception to this.

X Q. 615. The exceptions would be very few, wouldn't they?

A. Perhaps some; perhaps for some time; but, as a rule, I recollect that we always tried to close the saloon as soon as we opened the rear hall.

X Q. 616. When the saloon was open Sunday mornings until the call for the afternoon concert your beer-drawing apparatus was used, wasn't it?

A. I should think it was.

X Q. 617. It is the only way in which you had to get beer into the saloon, isn't it?

A. Yes, sir; for the greater part of the time, I guess it was.

X Q. 618. Haven't you testified on a former occasion that the saloon wasn't open on Sundays?

A. It is possible, and that I was mistaken just as Stief.

X Q. 619. Then if you did say under oath that the saloon was open on Sundays it was untrue? Is that so?

A. Well, you might call it a lie if you please, but then it was my impression, or else I didn't think about it; but if I say so, then our

business on Sunday was especially the concert business, and if the saloon was open it didn't amount to anything, and so I might say it was closed on Sunday, and didn't think about keeping it open in the forenoon; but I am sure the business didn't amount to anything in the forenoon.

X Q. 620. Raymond Stief would be likely to know what the business amounted to in the forenoon, wouldn't he?

A. Perhaps, and perhaps not.

X Q. 621. Wasn't he the barkeeper?

A. No, sir; he tended bar, and the first years he had to do work all around, and when he wasn't there a fellow was there a year or year and a half, and went to a machine shop and back again, and always took him when there was an occasion to get them, but as to the business for five years I guess he can't recollect everything.

636 X Q. 622. Albert Stief was one of your barkeepers?

A. You always call him a barkeeper.

X Q. 623. Who tended the saloon bar Sunday mornings?

A. I am not sure about this.

X Q. 624. Didn't Albert Stief?

A. I suppose he tended it sometimes, and Gilbert sometimes, and it may be I had to tend to it, to my dislike.

X Q. 625. I thought you said Mr. Gilbert didn't tend bar?

A. He sometimes had to do it. As a rule, I didn't like to be at the bar.

X Q. 626. Can't you tell me who were your barkeepers or, without reference to the name, who tended the bar Sunday mornings during 1877 and 1878 and 1879?

A. No, sir; I can't recollect this. By referring to the book I could find those men worked for us, but how often or how long they tended bar I couldn't say, because we had to prepare the whole place for the concerts, and one or the *othe* other, they all had to work and attend to the whole business.

X Q. 627. Did Albert Stief sometimes tend bar Sundays?

A. I couldn't say if he tended it Sundays, but he tended the bar.

X Q. 628. Did Otto Schantz tend the bar sometimes Sundays?

A. I suppose he did.

X Q. 626. Do you remember making an affidavit in the cases of Magin against McKay and Welker on the 26th day of December, 1885?

A. I don't know the date, but I recollect that I made an affidavit.

X Q. 630. At whose request did you make that affidavit?

A. I don't know if it was one of the parties that were sued or Mr. Sullivan. I can't say.

X Q. 631. You gave careful consideration to the statements which you made in that affidavit, didn't you?

A. I should think I did.

X Q. 632. You don't know whether you did or not?

A. I always try to do my best to say what I know about a thing, but of course by a strange question half a dozen times a man might

sometimes answer too fast without being quite sure about
637 everything, but I always try to do my best not to make any answers that are not to my recollection.

X Q. 633. You had no one to ask strange questions when you gave this affidavit, did you?

A. I think not.

X Q. 634. Who prepared this affidavit for you?

A. I guess I signed it here in Mr. Sullivan's office.

X Q. 635. Did you talk the matter over with him before the affidavit was prepared?

A. I think we did.

X Q. 636. And before you signed it did you read it?

A. I guess I did, or it was read to me.

X Q. 637. So you fully understood its contents?

A. I should think I know all that is in it.

X Q. 638. What did you say in this affidavit about keeping the saloon open on Sundays?

A. I don't recollect a single word to-day about it.

X Q. 639. Are the statements contained in that affidavit true?

A. Well, if I don't recollect them I scarcely could say to-day whether true or not.

X Q. 640. Then you can't recollect whether you made any false statements in that affidavit?

A. I recollect that I tried to tell the truth just as I do to-day, and if there is anything wrong in it it is a mistake or I had an impression that it was so; just like this opening. If I said it was open on Sunday I had the impression we did no business in the front saloon and had to attend to the rear hall to get everything ready for the concerts, and it might have been for some time it was closed and it may be it wasn't closed at all, but I never thought this would be very important if this was closed or not, especially as we have the Sunday laws and all ought to be closed on Sundays.

X Q. 641. Then if you did keep open Sunday mornings you violated the laws?

A. Well, in the afternoon, I suppose, just as well, and we had sacred concerts in the afternoon and that made some difference.

X Q. 642. Do you know how successful you were towards
638 telling the truth in your affidavit?

A. Oh, I don't know.

X Q. —. Don't you recollect that there was a reason for your saying in your affidavit of December the 26th, 1885, that you did not keep the saloon open on Sundays?

A. I don't recollect that there was any reason for it.

X Q. 644. You don't think there was any reason why you stated that?

A. I can't see any reason for it.

X Q. 645. Before making that affidavit didn't you have your attention called to certain affidavits made by Otto Schantz, Raymond Stief, and others?

A. Yes, sir.

X Q. 646. And didn't you in your affidavit say that those boys worked for you Sundays?

A. Yes, sir; I guess I said many of them worked on Sundays, and that meant Sunday afternoons.

X Q. 647. And didn't you say as they worked for you Sundays they couldn't have known anything of this apparatus, because the saloon wasn't open on Sundays?

A. Well, I guess so, but the greater part of them had nothing to do, and only Schantz, he was working there in the rear Sundays, like the others, except the latter part of the term, and then he was working whole days, and I don't recollect as he was included in the list of those boys.

X Q. 648. During the morning did you keep the passage from the saloon to the garden locked?

A. We did not.

X Q. 649. Is this statement true: "The bar in the saloon was always closed on Sundays, and no beer was drawn from this apparatus during that time"?

A. Well, it should should read Sunday afternoons for the greater part of the time, I suppose.

X Q. 650. Then that statement is not true, is that so?

A. Wefl, so far. I never had much to do in the front bar-room and it may be I didn't think about this front bar business at
639 all. I might have forgotten all about this little business that was done at the bar, if there was any.

X Q. 651. Might you not also have forgotten about the little business of the rubber hose over the beer-supply pipes?

A. No, sir; this was a matter we had there and could see that and could not forget this very easy.

X Q. 652. And couldn't you always see Sunday and what you were doing?

A. I attended to the hall and to the general business and didn't pay so much attention to the bar except to get everything in the best order, and how it was kept afterwards I don't remember so much about it.

X Q. 653. You remember that Sunday came once a week up here in 1877 and 1878?

A. Well, I guess on some occasions it came once or twice; when we had a festival we counted it two Sundays.

X Q. 654. Then you judge Sunday by the fact of certain festivities?

A. Yes, sir; when we done business.

X Q. 655. If you had the festivities two or three times a week you had two or three Sundays?

A. Yes, sir.

X Q. 626. Consequently, Sunday doesn't count much with you, does it?

A. Well, don't, perhaps, as much as with other people, and, perhaps, more. Some can make money six days and we could do it only on one day.

X Q. 657. Did you live at Falls Field?

A. Yes, sir.

X Q. 658. You were there constantly?

A. Yes, sir.

X Q. 659. And you were in charge of the place, weren't you?

A. Yes, sir.

X Q. 660. And the place was run under your directions?

A. Yes, sir.

X Q. 661. I think you told us that Mr. Gilbert had trouble
640 in getting around, owing to his size. How large a man was he in diameter?

A. He was a very fat man.

X Q. 662. What would you say his diameter was?

A. I never took his measure and don't know.

X Q. 663. Could he well get behind the bar?

A. Yes, sir; and he went behind the bar sometimes, but he couldn't well bend down to do anything.

X Q. 664. What did Mr. Gilbert do on Sundays?

A. When the front bar was open he was in the front bar. I didn't like to be behind the bar, so as not to drink any.

X Q. 665. Mr. Gilbert, was he the drinking member of the firm?

A. Yes, sir.

X Q. 666. That accounts for his size, I suppose?

A. Yes, sir.

X Q. 667. Did he live at Falls Field?

A. Yes, sir.

X Q. 668. And he would know precisely what was done on Sundays better than you?

A. Perhaps he knows as well, and perhaps better, and perhaps not.

X Q. 669. Isn't it a fact that you and Gilbert always spent your Sundays at Falls Field?

A. We had to be there, and both of us generally.

X Q. 670. Was there a gaslight in the cellar?

A. Yes, sir; there was.

X Q. 671. Where was that gaslight?

A. I guess it was about the center of the cellar, I should think.

X Q. 672. Was there any gaslight over about the lower ice box?

A. It might have been pretty near it, but I don't know how far it was off. I don't think it was exactly under it, but the center might not have been very far off.

X Q. 673. Was there one in the wine cellar?

A. I guess there was one in the wine cellar, too. There was none in the ice-house, but I think there was one in the cellar.

X Q. 674. What kind of a one was there in the cellar, was it fixed or did it swing in and out?

A. I don't recollect what it was. All I know is there was a pretty small burner.

641 X Q. 675. I think you stated one Mr. Schaub did some repairing on this apparatus?

A. Yes, sir; think he did.

X Q. 676. What did he do to it?

A. I am not exactly sure what he has done, but we had some trouble, I suppose, with the pipes and pumps, and how much it was or what it was I am not sure.

X Q. 677. Do you know when it was?

A. No, sir; but I know he made some repairs there.

X Q. 676. But you can't say when these repairs were made?

A. No, sir; I don't know when he has done it.

X Q. 679. Mr. Barr made some repairs, didn't he?

A. Yes, sir.

X Q. 680. What did he do?

A. I don't know as he had anything to do in the cellar. I know one thing sure—when we made this new hall that he put in the gas pipes, and what else he has done I don't know.

X Q. 681. You don't know, then, of his having done anything in the lower cellar?

A. Except putting it in for Mutschler.

X Q. 682. So far as you know, you don't know of Barr making any repairs in the lower ice box?

A. I only say I don't know if he made any or not.

X Q. 683. You don't know of his making any, do you?

A. I don't know.

X Q. 684. Did he assist in putting the apparatus in originally?

A. I guess he put in all the pipes originally.

X Q. 685. And after that you don't know of his working at the apparatus?

A. I don't know if he did or not.

X Q. 686. At the time the coils were taken out of the upper ice box did you have any other change made?

A. I don't recollect this.

X Q. 687. You don't recollect anything except that the coils were taken out; is that it?

A. Yes, sir.

X Q. 688. How long did it take Mr. Cassebeer to remove the coils?

A. I don't know.

642 X Q. 689. Two or three days?

A. I guess not; perhaps a couple of hours, I should think.

X Q. 690. He removed the coils, and what else did he do?

A. I don't recollect what else he had to do at the same time, but I don't think there was anything else done to the apparatus.

X Q. 691. Why was it you testified on a former occasion and on your direct examination that the rubber hose was not put on until after the coils were taken out?

A. It was my impression that we had all these changes made in the first summer, and so my opinion was that this was done first and had no idea that some of it was done in the summer afterwards, and this was the mistake that I made.

X Q. 692. How do you know that you didn't tell the truth when you said that the rubber hose were not put on the beer-supply pipes until after the coils were taken out?

A. By finding it in the book that Cassebeer has done this afterwards, and I recollect that I made a mistake about this.

X Q. 693. Cassebeer did do work for you in 1879, didn't he?

A. Yes, sir.

X Q. 694. And in the fall of 1879, didn't he?

A. I don't know this now, and we have to refer to the bills to find this.

X Q. 695. I will refer you to Mr. Cassebeer's account and ask you to state if it does not show that Mr. Cassebeer worked for you, commencing September 24, 1879, until November the 21st, 1879, at different times.

A. That is shown by my book just as well and I never denied that it did. That is $13.50.

X Q. 696. This bill amounts to $19.98; how do you account for that?

A. Now, you have got me, I suppose. I have got some other property, and he told me of a bill of nineteen dollars and so many cents and I tried to find it out, and I have got other property and I had the bills made out separately, because this had nothing to do with our business on Falls Field, and that is the Real school
643 property, on Mortimer street, and if he has a larger bill it is partly done in other places.

X Q. 697. Then the $13.50 which he done for you in the fall of 1879 was work which he did for you at Falls Field, was it?

A. Yes, sir; I think it was.

X Q. 698. How do you know the removal of the coils was not included in that $13.50?

A. Because I thought it was done a couple of months or a short time after we put that in again, and if I had the impression it was done in 1877—I am sure it was done in 1878 and not in 1879; and, on the other side, I have the impression it was the first job he had in my place.

X Q. 699. Let me refer you to Cassebeer's account on page 20 and show you how easily you are mistaken.

A. If you will show it to me, I will believe it.

X Q. 700. I ask you to explain this first item of an account headed "Gibert & Meinhard, page 20, Thursday, May 16th, 8 ⅜ fittings, 64 cents; 3 nipples, 24 cents; 21 feet ⅜-inch pipe, $1.05; ¾ day's time gas-fitter fixing pipe, $3.37."

A. I can't explain anything of this at all. I don't know how he is making out his bills and don't know nothing about it at all.

X Q. 701. Don't you know, after examining these items under date of May 16th, that it has not any reference to removing the coils from the upper ice box?

A. I think it doesn't show nothing at all of the kind.

X Q. 702. Did Mr. Cassebeer himself remove the coils, or did one of his men remove them?

A. I couldn't say this to-day. I think he has done it himself, and I don't know if he has done it or sent another man to do it, and I am not sure. If I say he has done it, it is understood he had charge of it.

X Q. 703. Does this charge, to wit, "September 6th, 14¾ feet ½-inch pipe, 73 cents; time plumber fixing pipe, $1.25; to 4 fittings, 32 cents," have any reference to his removing those coils?

644 A. I can't say; I suppose it is included in that where he says work, so and so much, and had to furnish stuff to it, and it was only a little work to take them out. I scarcely think took more than an hour or two, and I suppose he put it in a bill for work there. Of course, it don't say anything about coils.

X Q. 704. You have noticed it don't say anything about coils?

A. Yes, sir.

X Q. 705. You think, then, it would come under the head of time plumber fitting pipe, do you?

A. So I should think.

X Q. 706. As I find this item in his bill of 1879, September, 25th, "To one hour's time plumbing, fitting pipe, 50 cents," how do you know that is not the item for removing the coils?

—. I don't know what this is for.

X Q. 707. Then you don't get much support or comfort from Mr. Cassebeer's account?

A. I do not; and from no other such business man, because they generally try to charge as much as possible, and only sure of one thing, and that is if they have one hour's work they charge about five for it.

X Q. 708. And that is the kind of a man Cassebeer is, is it?

A. That is the kind about all the plumbers are.

X Q. 709. You wouldn't pay much attention to the oath of a plumber, then, would you?

A. Oh, well, I might see him around the place, but I am quite sure if I complained about a bill they would have to go to the shop and work there a few hours and put it on the bill.

X Q. 710. You would have to see a plumber, even Cassebeer, on the place before you would want to swear he had been there, wouldn't you?

A. Yes, sir; of course.

X Q. 711. Then you don't regard Cassebeer's accounts as being very reliable, do you?

X. I regard him as good as the others, and he is working for me to-day and he is about as good as the others are.

645 X Q. 712. But you don't regard his accounts any better than others?

A. I regard it better than the others, I guess, for I have him at work for me to-day yet.

X Q. 713. The third item of the charges on page 20 is: September 7th, one basin cock, $1.50; 2 pounds solder and hooks, 78 cents; time plumber and helper, fixing pipe, $1.25. Does that item refer to the removal of the coils from the upper ice box?

A. I don't know; it might have been a part of it and might not, and I don't know.

X Q. 714. Then the fact that you find on the bills rendered by Mr. Cassebeer in 1878 and 1879 "Time for fixing pipe" does not enable you to fix the time when the coils were taken out, does it?

A. No, sir; it does not.

X Q. 715. Mr. Cassebeer did considerable work for you in 1879 and 1880 and 1881 and 1882, didn't he?

A. I don't know what he done afterwards, but I don't think there was much done afterwards. There is the work he has done between 1878 and 1879, and two years, one bill of $11 and one $13.50.

X Q. 716. And those are all the bills you could find?

A. The other bills are not present because there are no other bills.

X Q. 717. Do you mean Mr. Cassebeer done no other work for you after those two bills?

A. He has done afterwards, but I don't think it is of great importance or of much consideration. If he has done some it was on some other property—Germania hall or the Real sc-ool, on Mortimer street.

X Q. 718. Did he do the plumbing at Germania hall?

A. Yes, sir.

X Q. 719. Did he do more work for you in 1879 than in 1878?

A. It appears there—two dollars and a half more. He might have done some on some private property.

X Q. 720. And didn't he do more for you in 1880 than in 1879?

A. I don't know anything about this.

646 X Q. 721. You can't trust your recollection to those matters?

A. I guess other people can't, either.

Adjourned to October 26th, 10 o'clock a. m.

OCTOBER 26TH—10 o'clock a. m.

The witness, resuming and being further cross-examined by Mr. BENNETT, testified as follows:

X Q. 722. Have you produced the bills?

A. I have got them here; yes, sir.

X Q. 723. Let me have them, please.

The bills presented to the counsel by the witness.

A. Two were missing. Those were not numbered at all, and put in the bundle afterwards and couldn't find them.

X Q. 724. You have produced three bills—two of Neuhart's and one of Cassebeer's, have you not?

A. Yes, sir.

X Q. 725. Those two bills of Neuhart's are for putting in the apparatus and pump, originally, aren't they?

A. Yes, sir.

X Q. 726. And those two bills of Neuhart's, dated June 1st and July 2d, 1877, have no reference to the rubber hose which you claim to have put around the beer-supply pipes?

A. No, sir; they have no-.

X Q. 727. Are those the only two bills for plumbing that you could find from Neuhart?

A. I think they are. I couldn't see any others.

X Q. 728. You are certain that Mr. Neuhart or none of his men put the rubber hose around the beer-supply pipes, aren't you?

A. The ends of them to connect them with the beer—faucets.

X Q. 729. Then the rubber hose referred to in these two bills of Neuhart's was the rubber hose that was used for connecting the beer-supply pipes to the faucets in the keg?

A. Yes, sir.

647 X Q. 730. And these two bills of Neuhart's have no reference to the rubber hose which you put around the beer-supply pipes, have they?

A. They have not.

X Q. 731. You testified on your direct examination that you did not put the rubber hose around the beer-supply pipes until after the coils were removed, didn't you?

A. I don't know; and I guess I stated before that I was mistaken in one thing, that one was done first and the other afterwards.

X Q. 732. Without reference to whether you were mistaken or not, didn't you testify on your direct examination that the coils were removed from the upper ice box before you put the rubber hose around the beer-supply pipes?

A. I guess I testified so because it was my idea that the coils were taken out shortly after we put them in.

X Q. 733. What, if anything, has changed your idea as to that?

A. I am sure Mr. Cassebeer has taken the coils out, and as it is shown that he did no work for me before 1878 so it is shown by this that the coils was taken out afterwards.

X Q. 734. It does appear, however, that Mr. Cassebeer did work for you in the fall of 1879, doesn't it?

A. Yes, sir; it does.

X Q. 735. And doesn't it appear that during the months of September and October and November, 1879 Mr. Cassebeer did quite an amount of work for you?

A. Yes, sir; he was very often doing repairs in our place.

X Q. 736. So far as Mr. Cassebeer's bills and accounts are concerned, is there anything to show that this work was not done in September, October, or November, 1879?

A. I think the bills don't show nothing at all when it was done.

X Q. 737. Neither the bill of 1878 nor the bill of 1879 shows when those coils were removed?

A. No, sir.

648 X Q. 738. This Cassebeer bill which you have produced, of October 22, 1878, is that a copy of the Gilbert & Meinhart account on page 20 of Cassebeer's book?

A. I don't know if it is a copy; it is the bill originally given and receipted by Cassebeer to our firm.

X Q. 739. And that is the bill in payment of which you gave him $11?

A. Yes, sir.

X Q. 740. And which is noted on your book as having been paid October 29, 1878?

A. Yes, sir.

X Q. 741. Isn't it a fact that if the removal of those coils by Mr. Cassebeer is not included in this bill of October 27, 1878, he then did not remove them until after September, 1879?

A. I don't see how I should answer this. I can't know it.

X Q. 742. Did Mr. Cassebeer do any work for you between September the 7th, 1878, and September the 24th, 1879?

A. I think all the work he has done is included in these two bills, because I can't find any other payments made.

X Q. 743. Don't those two bills show that he didn't do any work for you between September 7, 1878, and September 24, 1879?

A. No; they wouldn't show this, because he might have done a little repairs that had been paid cash right off; some small amount-were paid out of the daily income, and so some small sums you will find in the book sometimes; they were paid sometimes, and a little amount might have been paid without having a bill for it.

X Q. 744. Doesn't Mr. Cassebeer's account show that he had a running account w-th you whenever he was doing work for you?

A. I didn't pay any attention to Mr. Cassebeer's book.

X Q. 745. Do you remember a single occasion when Mr. Cassebeer done so much as a minute's work for you which is not included in his accou-ts?

A. I don't recollect that.

X Q. 746. Taking his accounts as true and as containing entries of all the work he ever did for you, doesn't it appear that be-
649 tween September 7, 1878, and September 24, 1879, he did no work for you?

A. It looks so, but I wouldn't swear to it that he done nothing.

X Q. 747. It not only looks so, but it is actually so from these accounts. Isn't that true?

A. Of course; if you know better I needn't answer.

X Q. 748. Doesn't these accounts show that to be the case?

A. No, sir.

X Q. 749. Do you mean to say these accounts do not show that Mr. Cassebeer did no work for you between September 7, 1878, and September 24, 1879?

A. They don't show anything of the kind.

X Q. 750. What do they show?

A. That I paid him the two bills, but they don't show that I didn't pay him a dollar or a dollar and a half out of the daily receipts without having a bill for it, because we done this occasionally.

X Q. 751. Did you ever do it to Mr. Cassebeer?

A. I can't say.

X Q. 752. Don't you know you did not?

A. I wouldn't say I did or did not.

X Q. 753. Will you say that you did?

A. I wouldn't say I did.

X Q. 754. Do you know anything about it at all?

A. I guess it is so long since that I don't recollect every cent I paid out to any one.

X Q. 755. Do you believe your accounts and Mr. Cassebeer's accounts to be correct?

A. I should think they were, but I wouldn't swear to it or at least Mr. Cassebeer's.

X Q. 756. Would you swear to your own accounts?

A. Yes, sir.

X Q. 757. Doesn't your own account show that you paid no money to Cassebeer between the bill of October 22, 1878, and the bill of December 17, 1879?

A. I say they don't show anything of the kind.

X Q. 758. What do they show?

A. They show the two bills, but they don't show if there wasn't -aid a small sum cash after the work was done.

650 X Q. 759. Do they show that you did pay a small amount of cash?

A. Sometimes a couple of dollars was paid, and this might have been included and a little lumber bill or anything else and don't show what it was.

X Q. 760. Isn't it a fact that neither the bill of October 22, 1878, nor the bill of December, 1879, contains any entry for the removal of these coils?

A. They contained so many hours' work, and I guess it was a little work only and wasn't no stuff to use and it might be included in the work, and it must be included if it was in these bills under so many hours' work.

X Q. 761. It would be included under the head so many hours' work?

A. Yes, sir.

X Q. 762. Because Cassabeer didn't furnish any material?

A. No, sir.

X Q. 763. He simply took the coils out?

A. Yes, sir.

X Q. 764. Describe how he took out the coils.

—. I guess he unscrewed it where they were connected, or at least one end, and I am not sure if they were connected at both ends, but at least at one end they had brass connections and had some trouble to take those out, and the other ends I am not sure of, but I am sure about this, that it was a small matter and that no material used to it except, perhaps, a little solder.

X Q. 765. Do you remember that any solder was used?

A. I can't say that I looked at it when he had done it.

X Q. 766. You say that one of the coils was connected by couplings. What end was that?

A. I am not sure to-day, but I was pretty sure about it five years ago. I think it was couplings on both ends, but I am not sure of it to-day.

X Q. 767. You are not willing to swear to-day whether there were couplings at both ends or not?

A. No, sir.

651 X Q. 768. If there were couplings at both ends, then he simply had to uncouple them?

A. Yes, sir.

X Q. 769. And in that case no solder was required?

A. No, sir.

X Q. 770. Let me refresh your recollection by referring to your former testimony and asking you if this is correct: "Crose-question 70. How were these coils connected with the supply pipes and faucets? A. They were fastened by brass couplings on each end. —. How were the supply pipes connected with the faucets before you used the coils? A. They connected in the same way with couplings."

A. If I said so five years ago I am quite sure to-day it is correct, for I knew better at the time than to-day.

X Q. 771. You knew better then than you do to-day; is that it?

A. Yes, sir.

X Q. 772. Then you state at the present time, after having your recollection refreshed by the reading of your former testimony, that the coils were connected at both ends by brass couplings, do you?

A. Yes, sir.

X Q. 773. Then isn't it the fact that Mr. Cassebeer in the removal of these coils had simply to uncouple them?

A. Yes, sir.

Complainant's counsel offered in evidence the three bills produced by the witness, and the same are marked Complainant's Exhibits Neuhart's Bill June 1st, 1877, Neuhart Bill July 2d, 1877, and Cassebeer Bill October 22, 1878.

X Q. 774. Were the beer-supply pipes tin-lined pipes?

A. I think they were; at least, they were ordered to be tin-lined.

X Q. 775. Did you use tin-lined pipes in connection with that apparatus for other than beer supply pipes?

A. I think not; there was no other use for them.

X Q. 776. Then the tin-lined pipe that is put upon these Neuhart bills are for the pipe used for the beer-supply pipes?

A. Yes, sir.

652 X Q. 777. I noticed on the Neuhart bill of July 2nd, 1877 the following items: "Gauge, $3.00; 12 feet rubber hose at 20 cents, $2.40," the amounts to which are erased. Explain how that was.

A. About the gauge, I am pretty sure it never was fixed on. We didn't use it. About the rubber hose, I don't know.

X Q. 778. Could it be that that rubber hose was furnished to you by Neuhart and by you used to surround the beer-supply pipes?

A. It wasn't, because this was old hose and not new hose.

X Q. 779. It was old hose which you used?

A. Yes, sir; I don't know what this was for. It seems it wasn't neccessary for the apparatus and was taken back.

X Q. 780. The hose which you used for covering the beer-supply pipes was old hydrant hose which you had about the place?

A. Yes, sir.

X Q. 781. And never had bought any hose for that purpose?

A. No, sir.

X Q. 782. And once put on, you left the hose aro-nd the beer-supply pipes?

A. I left it on, but I am not sure it wasn't changed afterwards. It might have been changed, but I don't know anything about it.

X Q. 783. You don't know of it having been changed, do you?

A. I don't know if it was or not.

X Q. 784. You don't know of that rubber hose ever having been taken off the beer-supply pipes?

A. I couldn't say.

X Q. 785. Do you know of it having been done?

A. I don't know if it was taken off and replaced with others or not.

X Q. 786. You never took it off yourself, did you?

A. I don't recollect that I did.

X Q. 787. Do you recollect of ever having done it?

A. I don't recollect that I did.

X Q. 788. Let me ask you whether that erasure of the item,
653 "12 feet rubber hose at 20." on Neuhart's bill of July 2, 1879, is not accounted for by the fact that the same charge, "12 feet rubber hose at 20 cts., $2.40," was included in the bill of June 1, 1877, and consequently, having been twice charged for, was erased in the second bill?

A. I suppose you will find out what I found out now ten years ago; I didn't pay it because it was paid.

X Q. 789. Why didn't you know that this morning when I asked you and when you had these bills before you?

A. I didn't pay any attention to it.

X Q. 790. You testify without paying attention, do you?

A. I am sure about everything I testified to, but about such particulars, about having bills paid or not, I am sure I paid for everything, so I don't see what for I should pay any attention to it afterwards.

X Q. 791. You think, then, you are the judge of what is necessary for you to testify to?

A. I think I am a judge about paying my bills; I don't think anybody else would pay it.

X Q. 792. Having thought about it, can't you tell us precisely when you put the rubber hose on the beer-supply pipes?

A. I can't, except I put them on in the summer of 1877.

X Q. 793. That is all you can say, is it?

A. Yes, sir.

X Q. 794. Can you say whether you put them on before or after the coils were taken out?

A. Well, I guess I said yes half a dozen times already.

X Q. 895. Can you say whether it was before of after you took out the coils?

A. It appears that it was before the coils were taken out, by the bills and book.

X Q. 796. Do you remember thus testifying on your direct examination in this case: "A. At first we put in some kind of coils in the bottom of the upper ice box, so as to put ice on and keep the

beer cooler. Afterwards we took those out again because they couldn't be well cleaned. Then we put on this rubber hose. It wasn't on before. That is about all the alteration made in
654 it, as I recollect."

A. That is just as I stated before—that I was of the opinion that the coils were taken out right after or a short time after they were put in. I didn't think they were in as long a time as it appears now by the book and bills.

X Q. 797. Now, having seen Cassebeer's bills, tell me exactly when Cassebeer took the coils out?

A. I guess I couldn't say more than that it was in the summer of 1878. As it wasn't in 1877, as my opinion was so, it appears it was in 1878.

X Q. 798. Cassebeer did work for you in May, 1878, didn't he?

A. I am not sure on this.

X Q. 799. Could he have taken them out then?

A. I don't recollect no dates when he done it.

X Q. 800. You don't recollect any dates, do you, except when the apparatus was originally put in and when it was taken out?

A. Of course I recollect only by the bills that have shown up here.

X Q. —. And if it wasn't for these bills you wouldn't be able to recollect anything positively at this late, would you?

A. I scarcely would recollect any dates or months, and perhaps not the year exactly.

X Q. 802. Did you make this model which you have identified?

A. I did not.

X Q. 803. Do you know who did make it?

A. I guess Mr. Schaub made it.

X Q. 804. Who is Mr. Schaub?

A. He is a plumber.

X Q. 805. Is he engaged at the present time in putting in beer-cooling and drawing apparatuses?

A. I never care about other people's business.

X Q. 806. You don't know anything about him?

A. No, sir.

X Q. 807. Did Mr. Schaub ever do any work for you?

A. He did.

X Q. 808. When?

A. I am not sure about it. He made some small repairs sometimes.

X Q. 809. When did he work for you first?

A. I don't recollect.

655 X Q. 810. Have you any bill showing when he first worked for you?

A. I didn't took for them. If there are no bills, I am sure he worked for us.

X Q. 811. Would your book which you have produced here show when you paid him any money?

A. Perhaps it would and perhaps it would not.

X Q. 812. Can you tell me about when this man first worked for you?

A. I couldn't say.

X Q. 813. What did he do for you when he first worked for you?

A. He had to do some repairs on the pump and the apparatus, but what it was I couldn't say.

X Q. 814. You couldn't say what he did for you?

A. No, sir; except that it was about the apparatus.

X Q. 815. What do you mean by the apparatus?

A. The beer-pump apparatus.

X Q. 816. It was at the pump that he did the work?

A. It was the whole apparatus; I don't know what it was, but I know we had him there on one or more occasions to do some work.

X Q. 817. On how many occasions?

A. I couldn't say.

X Q. 818. Two?

A. I couldn't say.

X Q. 819. You know he was there, do you?

A. I am sure he was there once at least.

X Q. 820. Was it before Cassebeer took the coils out or after?

A. I don't know.

X Q. 821. Was it before Cassebeer first worked for you or after?

A. I couldn't say.

X Q. 822. Who did your plumbing before Cassebeer?

A. It appears that the first one was Barr, doing the work for Mutschler.

X Q. 823. Have you any recollection of Schaub working for you before Cassebeer?

A. I don't know to-day if he was before or after Cassebeer.

X Q. 824. Where was the pump located?

A. It was on the back part of the counter or bar.

X Q. 825. In order to fix the pump, did he have to go into the cellar?

656 A. If he had to fix the pump only he wouldn't have to go into the cellar, because it was in the bar-room; but if he had to fix the pipes, it was in the cellar.

X Q. 826. Joe Wolf put a new pump in for you, didn't he?

A. He changed it.

X Q. 827. When did he change it for you?

A. I don't know.

X Q. 828. Have you any idea about when it was?

A. I have not.

X Q. 829. You haven't a very distinct recollection of any of these occurrences, have you?

A. I suppose I have as good a recollection of any facts as any business man has of his business, because I don't suppose anybody knows all repairs done at his place.

X Q. 830. It is a fact Joe Wolf put in a pump for you?

A. Yes, sir; changed the old one and put in a new one.

X Q. 831. What year did he do that?

A. I don't know.

X Q. 832. Before or after you put rubber hose on?

A. I don't know.

X Q. 833. In changing the pump, did Wolf have to go into the cellar?

A. I don't know.

X Q. 834. You just turned him loose there and let him go on without giving him any instructions?

A. Well, I guess he wasn't dangerous and I could let him loose.

X Q. 835. Do you remember giving him any instructions?

A. I do not.

X Q. 836. Did Schaub make this model under your instructions?

A. He asked me about it and I told him as much as I recollected about it, and after he had done with it he showed it to me and — if it was correct, and I told him it was correct as near as I recollected.

X Q. 837. In what respect is not that model correct, if any?

A. It is not correct about the proportions and parts of it.

X Q. 838. What parts are not in proportion?

657 A. The lower ice-house was a great deal bigger than this shows.

X Q. 839. Did the lower ice box extend over the upper ice box?

A. No; it extended, the corner, about as far as it shows here, but on the other side it was pretty near three times as long as this shows.

X Q. 840. Then this model correctly represents the location of the upper ice box relatively to the lower ice box?

A. I guess it does.

X Q. 841. And the ice box would be correct if it extended out further in the direction of the arrow which I have made in pencil upon the top of the model? Is that so?

A. Yes, sir.

X Q. 842. For how many feet were the beer-supply pipes exposed as they go through the floor and before they entered the lower ice box?

A. I guess it was about a foot; not much more than a foot; it may be a little over.

X Q. 843. It might have been two feet, might not it?

A. No, sir.

X Q. 844. Did you ever measure it?

A. By the length of the pieces of boards, I am pretty sure it wasn't much over three feet.

X Q. 845. That is the way you judge, is it?

A. Yes, sir.

X Q. 846. How long were those pieces of hose that surrounded the beer-supply pipes?

A. Something over a foot.

X Q. 847. You are sure now they were over three feet?

A. Yes, sir.

X Q. 848. Were they over four feet?

A. I can't see any reason why they should be four, but I think between three and four.

X Q. 849. Have you ever stated, before this occasion, that these pieces of hose were four feet?

A. I am not sure of it. I might have stated so and it might have been four feet, but I think they were between three and four. I am not sure about a few inches more or less.

658 X Q. 850. In all the statements which you have heretofore made on your former examination and in your affidavit and your direct examination, have you ever stated that those pieces of hose were four feet?

A. I don't know if I have or not.

X Q. 851. Haven't you always said they were about three?

A. I don't know if I have.

X Q. 852. Were they about three or about four?

A. I think they were between three and four; something over three feet.

X Q. 853. Was it three or four?

A. If you say between and it wasn't three and wasn't four and was between them.

X Q. 854. Was it three and a half?

A. I wouldn't say it was three and a half exactly, because I don't know.

X Q. 855. Why do you say they were between three and four?

A. Because it took about that length to get them right in the lower ice box.

X Q. 856. How far did the rubber hose extend into the lower ice box?

A. Just reached the inside of it.

X Q. 857. How many inches?

A. I am not sure whether one or two or three inches; about two inches, I should think.

X Q. 858. You will swear it was two inches, will you?

A. No; I guess not.

X Q. 859. Did it extend six inches?

A. I don't know.

X Q. 860. Did it or not?

A. They might not have been of the same length, and one might have extended one, and one might have extended five inches inside; no; I wouldn't swear to it. They extended a little in the ice box and that is all.

X Q. 861. Your recollection about that is very indistinct, isn't it?

A. Well, it seems to be poor in proportion to other people's, but I guess it is just as good as others', too.

659 X Q. 862. Do you think it is as good now as it was five years ago?

A. I guess it is, only I don't know as much to-day as I did five years ago.

X Q. 863. How far did you say, when you were examined five years ago, the rubber pipe extended into the lower ice box?

A. I don't know.

X Q. 864. How far, as a matter of fact, and having strict reference to the truth, did the rubber pipe extend into the lower ice box?

A. Just as I say. I think it was a couple of inches.

X Q. 865. What was the thickness of the sides of the lower ice box?

A. I think it was the boards about one inch and filled in with sawdust about four inches; so the whole thickness would be about six inches through.

X Q. 866. Did you thus testify on your former examination in the Welker and McKay cases: "33 X Q. How long are those rubber tubes? A. About three feet, I should say, the rubber hose"?

A. If I said about three feet it might have been a little shorter or a little longer. It appears they had to be a little longer than this.

X Q. 867. It now appears, does it, that they had to be a little longer?

A. Yes, sir.

X Q. 868. From what does that appear?

A. From the proportion of the box, and so on.

X Q. 869. By calculating in your head the distances?

A. Yes, sir.

X Q. 870. And from that you say that the length of the rubber pipe must have been more than three feet, don't you?

A. Yes, sir.

X Q. 871. And consequently you say now that the rubber hose surrounding the beer-supply pipes must have been more than three feet?

A. Yes, sir.

X Q. 872. What was the diameter of the rubber house surrounding the beer-supply pipe?

A. I think the diameter was a little over an inch.

X Q. 873. Do you remember of having testified yesterday
660 that the diameter was probably an inch and a half?

A. I don't recollect now, but an inch and a half would be over an inch, anyhow.

X Q. 874. Did you thus testify on your former examination in the McKay and Welker cases: "34 X Q. What was the diameter of the rubber hose? A. I guess it must be about one inch inside. They are about the same inside as the tin pipes outside?"

A. I think it was so.

X Q. 875. At the present time it is your recollection that they were more than an inch in diameter, isn't it?

A. If it was an inch inside it was more than an inch outside, sure. If I state diameter I mean by this it was more than an inch outside.

X Q. 876. The diameter of the tin waste pipes you stated was an inch, didn't you?

A. It is about an inch. I don't know if it was a little less or a little more, but I am sure it was about an inch.

X Q. 877. And the rubber hose slipped over this tin pipe, did it?

A. Yes, sir.

X Q. 878. So that the inside of the rubber hose must have been more than an inch; isn't that so?

A. It must have been more; it was about an inch. I know it was a little troublesome to get it over, so it kept on without being

fastened otherwise, because it slipped on pretty hard and wasn't easy to put it on.

X Q. 879. What was the length of the tin-lined pipes?

A. I think they were between ten and twelve feet.

X Q. 880. Was it ten or twelve feet?

A. I couldn't say; I never measured them.

X Q. 881. Did you ask Mr. Schaub to make this model?

A. I did not.

X Q. 882. How many conversations did you have with him about this model?

A. Only one.

X Q. 883. How did he happen to come to you and talk with you about this model?

A. Well, he wanted to know about the dimensions of the ice box, and so on, and I guess he knew part of it himself, and
661 other parts he wanted me to give him instructions about.

X Q. 884. On further recollection don't you remember Mr. Schaub's coming twice to you about this model?

A. He stopped in pretty often to get a drink, but I only had a talk with him about this once and afterwards when it was done he showed it to me.

X Q. 885. Isn't that two different times?

A. Yes, sir.

X Q. 886. So you did see him at least twice about this model?

A. Yes, sir.

X Q. 887. Does this model correctly show how the pipes came through the floor down into the cellar and entered the lower ice box?

A. Yes, sir; it does.

X Q. 868. Is there anything else about this model that don't strike you as being correct other than the length of the lower ice box?

A. I think it is correct in any other respect.

X Q. 889. At which end of the ice box as represented by this model was the wine cellar?

A. That commenced at the corner where the pipes entered the ice-house.

X Q. 890. It commenced at the corner where the pipes entered the ice-house, did it?

A. Yes, sir.

X Q. 891. And ran from the side which I have marked with a cross and the letter B in pencil, did it, out?

A. Yes, sir.

X Q. 892. Where was the door of the wine cellar with relation to the ice box at which it started?

A. I think the door of the wine cellar was about eight feet from this corner of the ice box.

X Q. 893. Wasn't the upper ice box located further off from the lower corner of the lower ice box?

A. It was not.

X Q. 894. This model you regard, do you, as a fair representation of your beer-drawing apparatus?

A. Yes, sir.

662 X Q. 895. And one that any one would recognize who had seen and examined your apparatus?

A. Yes, sir.

X Q. 896. Do you know why Schaub made this model and for whom he made it?

A. I do not; I think he made it just to show how this device was in our place, but for whom he made it I don't know.

X Q. 897. Are you a member of the saloon-keepers' association that is contesting this Gordon patent?

A. I never joined that organization.

X Q. 898. Have you contributed any money towards that association?

A. I have not.

X Q. 899. You know of that association, don't you?

A. I know there is one and I get some invitations sometimes for meetings, but I never was there and never paid anything towards it.

X Q. 900. But you have received invitations to be present at the various meetings, haven't you?

A. Yes, sir.

X Q. 901. And from whom have those invitations come?

A. I don't recollect; I suppose from the secretary of the association.

X Q. 902. Who is the secretary?

A. I don't know; I didn't pay any attention to those invitations at all, because I had no idea to go there.

X Q. 903. Were they written or printed invitations?

A. I guess they were printed.

X Q. 904. Signed by the secretary, you think?

A. I think so, or some one.

X Q. 905. Do you know who is the president of that association?

A. I don't know.

X Q. 906. Were any of these notices signed by Jos. Wolf?

A. I think not.

X Q. 907. Were any of them signed by Stuvenhaver?

A. I don't recollect the name; I scarcely looked at it.

X Q. 708. Where have these meetings been held?

A. And this I don't know. I heard about some having
663 been at Stuvenhaver's place, but I paid so little attention to those cards that I received that I don't recollect where the meetings have been lately.

X Q. 909. You have testified that you read your former testimony before giving your direct examination in this case.

A. Yes, sir; I read it over before I came here the first time, some weeks ago.

X Q. 910. Before you were first examined in this case?

A. Yes, sir.

X Q. 811. Where did you read it over?

A. At home, at my place.

X Q. 912. Who gave you a copy of your former examination?

A. I had one from the first lawsuit yet.

X Q. 913. How often did you read over your former examination?

A. I read it over once.

X Q. 914. On further recollection, can't you recollect when Joe Wolf put in the beer pump for you?

A. I couldn't, because all I recollect about it was that there was — new kind of pump out, and he offered to put the new one in and take away the old one.

X Q. 915. He had nothing to do with your beer apparatus, had he?

A. I think not.

X Q. 916. Can't you remember anything about Wolf's being at your saloon and putting in the beer pump?

A. I cannot. It might have been I wasn't there when he put it in; but I don't recollect anything about it, except that he changed a pump.

X Q. 917. Don't you recollect of telling Wolf what to do?

A. I do not.

X Q. 918. Don't you recollect explaining your beer-drawing apparatus to him?

A. I don't recollect this.

X Q. 919. Why did you discontinue the use of this beer-drawing apparatus?

—. I think we done it because we didn't have reason to keep the two ice boxes supplied with ice. Business was too small to keep up, so we commenced again selling beer from the small ice box in the upper bar-room, as we done first, before we had this apparatus.

664 X Q. 920. You think you use this apparatus about a year or two, do you?

A. More than a year—couple of years; I don't know; between 1877 and 1880. I couldn't say whether up to 1880 or 1881. I am pretty sure we used it about three years.

X Q. 921. Haven't you testified that you used it four years?

A. I may have done so and we may have used it four years, but I don't recollect to-day whether it was three or four.

X Q. 922. You don't recollect to-day how many years you used it?

A. No, sir; I do not, but I know it was more than one year.

X Q. 923. And that is all you do know, is it?

A. No, sir; I know a little more, but I wouldn't tell everything I know.

X Q. 924. Now, tell us all you know about how long you used this apparatus.

A. Well, all I know is, just as I say, that we used it longer than a year, and might have been three and might have been four years.

X Q. 925. And might have been two?

A. Might have, but I think it was more than two years.

X Q. 926. Have you been beeping anything back as regards to this apparatus or have you told us all you know about it?

A. I think I have told all you want to know.

X Q. 927. Or do you think if you were called as a witness to-morrow you would know a great deal more than you know to-day about it?

A. I think I might not.

X Q. 928. Then, may we understand that on this examination you have told us all you know about this beer apparatus of yours?

A. I guess I have told all that you asked about or anybody has asked me about.

X Q. 929. Can you think of anything else that you haven't been asked about and that you haven't said?

665 A. I only could add to the other testimony that I had more trouble with this apparatus and following lawsuits than I ever expected to have.

X Q. 930. Is there anything more that you would like to add about this apparatus? If so, state it now.

A. I scarcely think there is. I tried to do my best to tell all about it that I could recollect.

X Q. 931. Name every person who besides yourself ought to know about this beer-drawing apparatus of yours and about your having the beer-supply pipes covered with rubber hose.

A. I couldn't say who paid any attention to it. Perhaps some people coming down into the cellar might have seen it and some others not, but I couldn't say who looked at it or who did not.

X Q. 932. Name all parties whom you know as having knowledge of this beer apparatus of yours with the rubber hose around the beer-supply pipes.

A. I am sure only about the plumbers, because they had to work at it, and perhaps some of those men that had been working around the place and the cellar, but how much attention they paid to it or how often they looked at it or if they look at it all I couldn't say.

X Q. 933. Name the plumbers who to your knowledge knew of your having the rubber hose around the beer-supply pipes.

A. I couldn't say who of them or if any one of them knew about it. I think they knew about it, but I couldn't say if they looked at it or not.

X Q. 934. Name every person that you think knew of it.

A. I think those three plumbers working at the place knew something about it.

X Q. 935. Give their names.

A. Barr, Cassebeer, and Schaub.

X Q. 936. When did Schaub obtain his first knowledge of your beer-drawing apparatus with the rubber hose around the beer-supply pipes?

A. As I stated before, I don't know when he worked for us, and so I don't know if he knew anything about it before he seen it.

666 X Q. 937. Was he then doing business for himself?

A. I guess he was.

X Q. 938. You say some of those men had to go in and around your cellar?

A. Yes, sir.

X Q. 939. I suppose you there referred to the different lads and men who were in your employ and also those who took the beer into the ice box, did you?

A. I mean those young men that worked there around the place, especially about the front bar-room.

X Q. 940. Name every one of these young men who to your knowledge knew of your beer-drawing apparatus with the rubber hose around the beer-supply pipes.

A. I couldn't say how much those men knew about it. I think young Stief and perhaps the two Stief boys.

X Q. 941. Raymond and Albert Stief?

A. Yes, sir.

X Q. 942. Did Otto Schantz know about it?

A. He ought to know something about it.

X Q. 943. And Otto Hahn?

A. I think not. He never had anything to do in the front bar room.

X Q. 944. Did he never go into the cellar while he was in your employ?

A. Sometimes he went down to get out some beer, I suppose, but he never worked in the front room except to take out beer out of the lower ice-house.

X Q. 945. Then Otto Hahn, if he had his eyes about him, could have seen this thing?

A. Yes, sir; could have seen it.

X Q. 946. And you don't know whether he did or not see it?

A. I don't know.

X Q. 947. He was in a position to see it?

A. He was in a position to see anything in the lower ice-house, but he had no other business except getting out beer at the lower ice-house.

X Q. 948. Isn't it a fact that anybody going into the lower ice-house who looked around could see the rubber pipe projecting?

—. He might have seen it.

667 X Q. 949. Was there a gas jet in the lower ice box?

A. There was none in the lower ice box.

X Q. 950. They had to take a candle when they went down?

A. Yes, sir.

X Q. 951. Was there a gas light of any kind in the cellar?

A. There was about in the center of the cellar.

X Q. 952. How near the wine cellar was it?

A. I think it was about six feet away from the wine cellar.

X Q. 953. Wasn't there a gas jet against or very nearly against the partition of the wine cellar?

A. There wasn't at the partition. There was one inside of the wine cellar and there was one a little ways off and about six feet off.

X Q. 954. There was one inside of the wine cellar?

A. Yes, sir.

X Q. 955. And wasn't that against the side of the ice box?

A. No, sir; this was at the side of the partition, inside of the partition of the wine cellar.

X Q. 956. Inside of the partition that divided it off from the rest of the cellar?

A. Yes, sir.

X Q. 957. And how near the corner of the ice box was it?

—. I should think it was right near the door when we entered the wine cellar.

X Q. 958. It was one of those swinging jets, wasn't it?

A. I think it was not, but I couldn't say to-day.

X Q. 959. You couldn't say whether it was a swinging one or not?

A. No, sir; not to-day.

X Q. 960. Do you remember of the beer-supply pipes, or one of them, being burned off or melted so as to need repairing?

A. I don't know anything about it.

X Q. 961. You don't remember that?

A. I don't remember anything about this at all.

X Q. 962. That might have been the case?

A. I think not; there was no light so near the pipes.

X Q. 963. But you don't remember and can't say at this time whether one of the beer-supply pipes was burned or melted off or not, can you?

A. If it was done by some kind of accident nobody told
668 me about it. I never heard anything about it.

X Q. 964. Don't you remember Barr soldering those beer-supply pipes?

A. I do not.

X Q. 965. Don't you remember Barr soldering the beer-supply pipe that was burned or melted off?

A. I don't know anything about this at all.

X Q. 966. Who kept the key to the wine cellar?

A. This was kept in the bar-room generally.

X Q. 967. Suppose a bottle of wine was called for in the garden, who would take the order?

A. That never was called for and the people scarcely drink any.

X Q. 968. What did you keep in the wine cellar?

A. Kept wine, and when we had little parties, and so on, had to use of it.

X Q. 969. If you had occasion to send down to get a bottle of wine, who would you send for it?

A. One of those men we trusted. Of course, we couldn't send all of them, except one or the other that we could trust to send to the wine cellar.

X Q. 970. Have you named every one who to your knowledge knew of your beer-drawing apparatus with the rubber hose over the beer-supply pipes?

A. I couldn't say how many knew about it, because I didn't know who looked at it and who did not.

X Q. 971. Have you named every one that you know of as having knowledge of that?

A. I think I have.

X Q. 972. Gilbert did not know of it, did he?

A. He knew some of it.

X Q. 973. Did he know of your having the rubber hose around the beer-supply pipes?

A. I don't know if he did or not.

X Q. 974. Did you ever speak to any one about your beer apparatus and of having rubber hose around the beer-supply pipes?

A. I guess I did.

X Q. 975. To whom?

A. I don't know to-day. I talked it over freely. When
669 this first suit came on I talked to every one that would hear something about it.

X Q. 976. You were quite lively, then, in telling what you had done, weren't you?

A. Yes, sir; I was always ready to say what I know.

X Q. 977. To whom did you speak of your beer-drawing apparatus having rubber hose around the beer-supply pipes prior to the commencement of the Magin suits?

A. I don't recollect at all.

X Q. 978. Can you name a single person that you ever mentioned it to prior to that time?

A. I cannot.

X Q. 979. Do you remember visiting Mr. Magin's saloon and there examining his beer cooling and drawing apparatus?

A. I recollect that I was there and looked at it.

X Q. 980. When was that?

A. I don't recollect when it was.

X Q. 981. You can't even recollect that?

A. No, sir.

X Q. 982. Was it in 1879?

A. I don't know if it was in 1879 or 1877 or 1880, and I couldn't say. I know only I was there once to look at it.

X Q. 983. Why did you go there to look at it?

A. I was curious to find out how it was.

X Q. 984. You had heard a good deal about it, hadn't you?

A. I heard about it just when Mr. Bartholomay put it up for Mr. Magin. He told me he had done so.

X Q. 985. What did Mr. Bartholomay tell you?

A. He told me he had put up a nice apparatus like this for Magin.

X Q. 986. Praised it very highly?

A. Yes, sir.

X Q. 987. And said it was something new, didn't he?

A. No, sir; but just as it ought to be, and he didn't say it was something new.

X Q. 988. Just as it ought to be?

A. Yes, sir.

X Q. 989. Bartholomay knew what you had, didn't he?

A. Well, he knew partly at least, because a greater part was done by his advice.

670 X Q. 990. Did Mr. Bartholomay say that Magin's apparatus was like yours?

A. He didn't say it is, but "I put up an apparatus for Mr. Magin, and it is first class now."

X Q. 991. And he recommended you to go and see it, didn't he?

A. I couldn't say. He only told me he had done so.

X Q. 992. Didn't he tell you you ought to put in such an apparatus?

A. No, sir.

X Q. 993. Where was it Bartholomay told you of Magin's apparatus?

A. It was after he had advised me to make those changes and put in this apparatus, but how long after I couldn't say.

X Q. 994. Was it a month or two after?

A. This I couldn't say. I only recollect it was done to get Mr. Magin a customer for his beer.

X Q. 995. What was done to get Mr. Magin a customer for his beer.

A. To put in this apparatus for him.

X Q. 996. Bartholomay had put in to get Magin as a customer?

A. Yes, sir.

X Q. 997. You had interest enough in what you had heard of the Magin apparatus to go to his saloon and ask to see it, didn't you?

A. I had no other interest, but I was curious to see if it was better than mine was the reason I went there to look at it.

X Q. 998. Did you see Mr. Magin when you got to his saloon?

A. Mr. Magin went with me to the cellar and showed it to me, I think.

X Q. 999. Showed you the whole thing?

A. Yes, sir.

X Q. 1000. What did you say to Mr. Magin?

A. I don't recollect.

X Q. 1001. Did you say to Mr. Magin that you — an apparatus resembling that?

A. I guess I did not. I think not.

X Q. 1002. Didn't you express surprise to Mr. Magin at the completeness of his apparatus?

A. I may have done so ane I may not.

671 X Q. 1003. Didn't you?

A. I couldn't say; we exchanged some words but what they were I couldn't say.

X Q. 1004. Didn't you tell Mr. Magin that you had no idea that he had any such thing, and that it was something new to you?

A. I don't recollect about a single word wd said.

X Q. 1005. Will you testify that you didn't say so to Mr. Magin?

A. I will not testify anything at all about this occasion.

X Q. 1006. How long did you remain at Magin's examining this apparatus?

A. I think scarcely a couple of minutes.

X Q. 1007. Do you mean to say under oath that you examined that apparatus in the bar and in the cellar in two minutes?

A. Yes, sir, I will; it may have been three or four or five minutes, but it only took a few minutes.

X Q. 1008. You went behind the bar and looked at the upper ice box, didn't you?

A. I think I did, but I am not sure if I went behind the bar or looked in front of the bar. I only recollect I went into the cellar and Magin showed me the ice-house.

X Q. 1009. And didn't he explain the operation of the apparatus?

A. I don't recollect, but it may be; I am not sure if he showed it to me, but I think I had a chance to see all of it.

X Q. 1010. You saw how the beer-supply pipes ran, didn't you?

A. I can't recollect to say what I have seen, but I think I had a chance to see all there was to be seen about it.

X Q. 1011. Didn't he show you the cold air passage and explain its operation?

A. He might have done so, but I don't recollect what he done. It is possible he showed me everything about it.

X Q. 1012. After you had been to Mr. Magin's did you see Mr. Bartholomay?

A. I saw Mr. Bartholomay afterwards perhaps more than a hundred times.

672 X Q. 1013. Did you say anything to him about the Magin apparatus?

A. I don't think I ever did.

X Q. 1014. Didn't you tell Mr. Bartholomay that it was the best thing you had ever seen, in substance?

A. I think not, that I ever talked a word about it to Mr. Bartholomay.

X Q. 1015. Is Mr. Bartholomay a man that you would believe?

A. I guess he could be believed.

X Q. 1016. Would you believe him or not?

A. I guess I would believe him, but not in everything. As soon as his business interests coming in contact with the truth I guess he will be just like other men.

X Q. 1017. You think, then, that Mr. Bartholomay is a man of such character that he would lie where his business interests were at stake?

A. I am sure he would do as any other business man.

X Q. 1018. And you think any other business man would lie when his business interests are at stake, do you?

A. I am sure of it.

X Q. 1019. And that is your gauge of human nature?

A. Yes, sir; and I only wish to except lawyers out of this. I am not quite sure about them.

X Q. 1020. Did you talk with anybody else than Mr. Bartholomay about Magin's apparatus after you had seen it?

A. I am pretty sure I have been talking with some people but, just like Mr. Bartholomay, I guess I could say I am quite sure that I didn't talk with him about it.

X Q. 1021. Now, you think you didn't talk with Mr. Bartholomay about it after you had been to Magin's?

A. I think I didn't, but we might have exchanged words about the matter on some occasion, but to-day I couldn't say, and it is possible I did, but I don't recollect any conversation with Mr. Bartholomay after he told me to *to* put in this apparatus.

X Q. 1022. Did you talk with Mr. Gilliard about Magin's apparatus after you had seen it?

673 A. It might have been, but I am not sure. I know I have been talking to some people, and especially saloon-keepers, about it.

X Q. 1023. To what saloon people did you talk about the Magin apparatus?

A. I don't recollect to-day. I had a chance to see so many, and I don't know with whom I talked about it.

X Q. 1024. Did you *you* talk with Mr. McKay about it?

A. It is possible, but I couldn't say to-day, because I scarcely knew Mr. McKay before this first lawsuit came on.

X Q. 1025. Prior to the first suit brought by Magin, did you ever say to any one that your apparatus for drawing beer resembled Magin's?

A. I don't recollect if I did or not.

X Q. 1026. Isn't it the fact that you did not?

A. I say I don't recollect if I did or not.

X Q. 1027. When was it you had a conversation with Mr. Gilliard about Magin's apparatus?

A. I can't recollect.

X Q. 1028. How long after you visited Magin's saloon was it?

A. I couldn't say.

X Q. 1029. How far was your saloon and residence from Magin's saloon when you went there to examine his apparatus?

A. I never had a chance to take a measure. It was from Falls Field to the corner of, I guess, Water and Andrews street.

X Q. 1030. Had you been in the habit of visiting Mr. Magin's saloon?

A. I had not.

X Q. 1031. And your visit there was for the special purpose of seeing his apparatus, wasn't it?

A. It was.

X Q. 1032. You have talked on several occasions with Albert Stief about your beer apparatus, haven't you?

A. I scarcely have.

X Q. 1033. You have no recollection of talking with Albert Stief about it?

A. I recollect that I met him on some occasions when we had this first lawsuit.

674 X Q. 1034. You didn't ask him to give an affidavit in the Welker and McKay cases?

A. No, sir.

X Q. 1035. You had nothing to do with his coming here to testify in this case, had you?

A. No, sir; had nothing to do with it.

X Q. 1036. Have you had any talk with the plumber, Barr, about your apparatus and his testifying here?

A. I have not.

X Q. 1037. Did you have any talk with him about the time he gave his affidavit in the Welker and McKay cases?

A. I have not.

X Q. 1038. Have you had any talk with Cassabeer?

A. I had not.

X Q. 1039. When did Albert Stief commence working for you?

A. I don't know the year, but I only know that he was a boy of about fourteen years when he commenced working there.

X Q. 1040. What did he do at first?

A. He at first was a waiter boy in the garden.

X Q. 1041. How long was he a waiter boy in the garden?

A. I couldn't say.

X Q. 1042. When did he become a bartender in the saloon?

A. I couldn't say any certain time, and only know he at times, when we had a chance to get him, liked to have him there and kept him as long as possible, and he went away some time afterwards and came back again, and how long he was away or when he came back I couldn't say.

X Q. 1043. Then he was not a steady barkeeper in the saloon?

A. He was there working for a long time, I guess, but I don't know how long it was.

X Q. 1044. How long was that after he entered your employ?

A. This I couldn't say.

X Q. 1045. Did he become your saloon barkeeper in 1880?

A. I couldn't say when he commenced doing anything at the bar, but he worked around the place and has done a great deal of housework and helped at the bar, but any length of time he has done so I couldn't say.

675 X Q. 1046. About how old was he when he first commenced tending saloon bar?

A. When he commenced working for us he was about fourteen years old.

X Q. 1047. How old was he when you promoted him to the position of bartender in the saloon?

A. I didn't keep any account of his age.

X Q. 1048. Was it three or four years after he commenced working for you?

A. It might have been one year afterwards or two, but I don't know to-day.

X Q. 1049. He was, nevertheless, a bartender in the saloon, was he?

A. He was working about the bar-room and the whole place, and tending bar at the saloon for a certain length of time, which I don't know.

X Q. 1050. Did you mention him as one of your bartenders on your former examination?

A. I said on the former occasions that we had only one regular

bartender, and that was Gutacher, and all the others done work on the whole place and couldn't be called regular bartenders.

X Q. 1051. Didn't you mention Otto Schantz as one of your bartenders?

A. You might call him a bartender or a porter. He was about the same, and done house-work and everything.

X Q. 1052. Why didn't you mention Albert Stief as being one of your bartenders?

A. Because I don't take any one of those fellows as barkeepers. They are not regular bartenders and doing only bar-work. We had more than a dozen such young men, and they couldn't be called bartenders if they was sometimes at the bar.

X Q. 1053. Then Albert Stief was one of the many who worked for you, and who occasionally, as your business required, tended saloon and the bar? Is that so?

A. I think he worked for me about five years, and with some spaces of time left out when he went to some other business, but he wasn't like the other boys that worked there on Sundays,
676 and he worked there always for a steady term, doing all kinds of work, and in the front part as well as the rear.

X Q. 1054. Raymond Stief sometimes tended the bar in the saloon, didn't he?

A. We had Raymond Stief for a short time, but how long I couldn't say. I shouldn't think it was over two months.

X Q. 1055. Otto Schantz tended bar in the saloon, didn't he?

A. Yes, sir.

X Q. 1056. Can you name any one else who tended bar in the saloon?

A. There was Felix Gunther. He commenced setting up pins, but afterwards he had to work in the bar-room like others.

X Q. 1057. Can you name any other person who tended bar in the saloon?

A. No; I don't recollect any one else.

X Q. 1058. Isn't it the fact that at different times all of the young men employed around the place tended bar in the saloon?

A. This is not a fact. There were a great many of them that never went behind the bar in the saloon.

X Q. 1059. Didn't Otto Hahn tend bar on different occasions?

A. No, sir; he never did.

X Q. 1060. Did any of the Englert boys tend bar in the saloon?

A. No, sir; I am quite sure they never did.

X Q. 1061. You can remember the fact that Otto Hahn and the Englert boys did not tend bar in the saloon at any time while they worked for you, and yet you can't remember certain dates in reference to your apparatus. Isn't that so?

A. That is so exactly.

X Q. 1062. And after a lapse of eight or ten years you can swear positively, notwithstanding your very indistinct recollection as regards your apparatus that certain young men out of the many which you employed never tended bar in the saloon?

A. I am quite sure about this, but I am not sure about any

time when one or the other has done a certain work
677 for us, but about people that worked for me I recollect evrrything about it.

X Q. 1063. You recollect everything about people who worked for you?

A. Yes, sir.

X Q. 1064. When did Otto Schantz work for you?

A. I guess he was the last man working for us, so I think it was about 1880 or 1881 or parts of both years.

X Q. 1065. He didn't work for you in 1879?

A. He commenced working or may have commenced in 1876 already, but, like the others, barkeepers on certain occasions in the rear hall.

X Q. 1066. When he was bar-keeper and when he was working for you was it a part of his duties to go into the lower cellar and set up the kegs of beer?

A. Yes, sir.

X Q. —. When did Otto Hahn work for you?

A. I couldn't say when, but I know he worked for us for years.

X Q. 1068. Was Otto Hahn older or younger than the Stief boys?

A. He was older.

X Q. 1069. When did the Englert boys work for you?

A. I couldn't say the time, because there was so many of them. At first we had one or two and afterwards we had smaller ones grown up.

X Q. 1070. Did Henry J. Wieland work for you?

A. It is possible, but for a great many of them I didn't know their names. We engaged them and paid them off in the evening and set them free again.

X Q. 1071. Didn't you say a moment ago that you could remember the persons that worked for you?

A. Yes, sir; but I didn't say that I could recollect the names.

X Q. 1072. How, then, do you recollect that a person did or did not work for you if you didn't recollect the names?

A. I didn't think it was so important for you to know every boy that ever waited on Sundays. I would have kept track if I had.

678 X Q. 1073. Then you would have no doubt about being able to show or to make it appear when you made this apparatus if you could go back ten years?

A. I guess ten years ago I knew more about it than I do to-day.

X Q. 1074. I suppose you would like to go back ten years and fix things up so as to establish the date of this apparatus?

A. I got married about a week ago, and I don't want to — back ten years.

X Q. 1075. Then you can't say whether Wieland did or did not work for you?

A. All I recollect is that I heard mention of his name, but I don't or couldn't say exactly that he worked for us, but think there was

one of those men that worked there on Sundays, but I am sure he never worked in the front bar-room.

X Q. 1076. When did you hear his name mentioned?

A. The boys talked sometimes, or else it may have been mentioned afterwards. I guess it was mentioned that he made an affidavit like the others. I guess that is the reason I recollect his name.

X Q. 1077. Didn't you in your affidavit say that "Wieland was some of the same crowd of about forty young lads who worked for us on Sunday as waiter boys in our concert hall"?

A. That is the same thing I stated just now.

X Q. 1078. If you didn't know positively that he worked for you why did you make such a statement in your affidavit?

A. I found his name together with the others, and then I found he was one of those that worked in the rear hall and was quite sure he never worked at the front bar-room.

X Q. 1079. You found out he had given an affidavit for Magin?

A. Yes, sir.

X Q. 1080. And, without further consideration, you classed him as one of the forty boys that worked in the rear garden?

A. I am certain I never had him in the front bar-room, or I would have known more about him.

679 X Q. 1081. You didn't refer to any book to find out?

A. I am quite sure we don't have his name in the books.

X Q. 1082. When did Wieland work for you?

A. I don't know; for a term of years; as long as we had the Sunday concerts we had so many different people work there I scarcely got acquainted with them, and by chance found out some of their names, but very often we didn't know their names at all.

X Q. 1083. Didn't you state in your affidavit in the McKay & Welker cases that Albert Stief was one of your bartenders?

A. It may be I did and he was one; if you call all those barkeepers that tended bar sometimes you may class him as a barkeeper and some of the others, too, and I don't think any one that is working sometimes behind the bar is a regular bartender.

X Q. 1084. Why, then, didn't you say Raymond Stief was one of your bartenders?

A. I don't know if I said so or not. He was one of the Sunday bartenders in the rear hall for a long time, and for a short time he helped us out in the front bar-room. If you want to classify him him as a bartender, it is all the same to me.

X Q. 1085. For a short time Raymond Stief was a bartender in the saloon, then?

A. Yes, sir.

X Q. 1086. What have you to say as to this statement from your affidavit: "Young Raymond Stief wasn't our bartender and had nothing to do about the bar or this apparatus, and had no occasion to examine it"?

—. No, sir; he was no regular bartender. That was what I intended to say, and he helped us out for a short time. Of course, he might have been to this apparatus, as others might have come in the place and looked at it. I never would say it was impossible for

any one to look at it, because it was open for any one, and he might have it looked at it too.

X Q. 1087. Then, you didn't intend to make any such statement as I have read to you?

A. I didn't intend to say he had no chance to look at it.

680 X Q. 1088. You do say so in your affidavit, don't you?

A. I don't recollect; if it reads so it wasn't the intention to say he had no chance, but it was my opinion that he didn't know anything about it.

X Q. 1089. Doesn't this read so, "Young Raymond Stief was not our bartender and had nothing to do about the bar or this apparatus, and had no occasion to examine it"?

A. If it reads so it was my opinion that he had nothing to — with the bar-room, and afterwards I found out for a short time he helped us out in the front bar.

X Q. 1090. How did you find that out?

A. I talked this matter over with Albert Stief and I recollect that his brother had worked in the front bar-room for a short while.

X Q. 1091. How long did Raymond act as barkeeper in the front bar?

A. I don't know if it was a couple of weeks or more than that, but I am only sure it was a short term only.

X Q. 1092. Do you know what year it was in?

A. I don't recollect what year it was.

X Q. 1093. Do you understand that when a witness under oath makes one statement and then makes a contrary — under oath what it is called?

A. I know what it is called, for I know that erroneous statements are made very often, so I class this as an erroneous statement, because I didn't recollect all the people that had been working for a short time *f*n our place.

X Q. 1095. Do you know it is a crime punishable in State prison?

A. Yes, sir; I know it well enough, but I am quite sure if all those be sent to State prison, the greater part of our people would have to be sent there.

X Q. 1096. Do you realize the fact that you have repeatedly contradicted and denied statements that you made on a former occasion under oath?

A. Yes, sir; I have found this out.

X Q. 1097. Then you realize the fact that you have com-

681 mitted that crime which the law styles perjury, do you?

A. Well, I don't say that this is a crime, because an erroneous statement is not a crime, and I am quite sure that all these errors appearing in one of those statements are just by not recollecting the facts at the time, and none of them was given purposely.

X Q. 1098. You prefer to call them errors, do you?

A. Yes, sir; so I do.

X Q. 1099. Do you realize the fact that your false statements in effect swore away the property of Mr. Magin?

A. I don't know this and didn't know this when I gave the first

testimony, and I don't know it now, but I am always ready to tell the truth as well as I know it, and so I did on the first occasion and so I do to-day.

X Q. 1100. Have you told any one that you beat Mike once, referring to Mr. Magin, and that you would beat him again?

A. It is possible that I have done so, but I don't recollect as I did, but it is possible I said so at some time.

X Q. 1101. What business have you to make such a statement as that, being a disinterested party, as you would have the court believe you are?

A. The business is quite plain.

X Q. 1102. Didn't you request Albert Stief not to give an affidavit to Mr. Magin?

A. I didn't do this and never asked him to do a thing or not to do it.

X Q. 1103. Didn't you request Raymond Stief not to give an affidavit to Magin?

A. I never talked to him about *him* it.

X Q. 1104. Do you regard Albert Stief as a man entitled to belief?

A. I think Albert Stief to have been the best of all the people we have ever engaged in our place and the most honest of all of them.

X Q. 1105. Without regard to the degree of honesty of you employés, do you regard Albert Stief as a person entitled to belief?

A. I think you would believe him always. I never found him to tell a lie.

682 X Q. 1106. Did you ever find Raymond Stief to tell a lie?

A. I scarcely was much acquaited with him.

X Q. 1107. Why, when you gave your former affidavit did you say, "I didn't give the names of the lads Raymond Stief or Henry Koehler, because they were not bartenders," and not include the name of Albert Stief?

A. Because the two former, Raymond Stief and Koehler, I didn't recollect at all, as they worked as barkeepers in the front bar-room, because it was only a very short while they had been working there.

X Q. 1108. For how long did Henry Koehler tend bar in the front saloon?

A. He scarcely tended bar at all in the front saloon. He had been working, doing house-work, for some time, but as soon as we trusted him behind the bar he got drunk, and therefore we scarcely let him go behing the bar.

X Q. 1109. He only tended the saloon bar occasionally, then?

A. If we had nobody else to attend to it he might have been behind the bar on one or two occasions.

X Q. 1110. When did Koehler work for you?

A. As a waiter boy he worked for us; it may be a couple of years as a waiter boy in the rear hall.

X Q. 1111. During what period was it that he occasionally tended bar for you?

A. I couldn't say this.

X Q. 1112. Was he older or younger than Albert Stief?

A. I think he was about the age of Albert Stief.

X Q. 1113. He was most engaged in cleaning up *up* the saloon, was he?

A. He was mostly engaged on Sundays only, and for a short while, I suppose a couple of weeks only, he had nothing to do, and so we had him to clean out everywhere in the place.

X Q. 1113. He would clean out the bar, would he, and this ice box?

A. Perhaps clean out everything. If he cleaned the ice box I don't know.

683 X Q. 1114. Didn't whoever cleaned out the saloon and attended to that work clean out the upper ice box and the closet under the upper ice box?

A. I suppose it has been done, but whoever has done it I am not sure about.

X Q. 1116. At first when the water from the upper ice box was caught in the pails in the closet underneath, who emptied these pails?

A. I suppose some one that tended the bar.

X Q. 1117. Wasn't that done by whoever cleaned out the saloon?

A. I should think any one that was there had the duty to take this out.

X Q. 1118. Did you ever empty them?

A. Just as I say, I scarcely went behind the bar, except trying to make the best improvements as I could. As a general rule, I had nothing to do behind the bar.

X Q. 1119. What other improvements did you ever make at Falls Field other than to put, as you claim, the rubber hose around the beer-supply pipes?

A. We built a hall there for about $5,000, and I personally superintended the whole building, and I done all the work at the garden and put on all the gas burners that were took off—poor gas burners, and put on new ones and sometimes fixed gas-work and with some old pipes, and so, of course, doing some carpenter-work and working about the place pretty near all day.

X Q. 1120. And those are the improvements which you made, are they?

A. There are plenty of others—putting up fences and repairing fences and to keep the garden in order, and this I had to do personally.

X Q. 1121. You didn't devise this beer apparatus that Neuhart put in, did you?

A. I did not, and didn't know anything about it before he put it in.

X Q. 1122. And you didn't know what it was going to be until he got it completed, did you?

A. I did not.

684 X Q. 1123. Did you ever make a single improvement or change of any kind to that beer apparatus other than as you claim, put the rubber hose around the beer-supply pipes?

A. I did not.

X Q. 1124. You don't remember of ever having emptied the water pails underneath the upper ice box, do you?

A. I might have done so, but, as a rule, I didn't think it would be my business to do such work, and I always had somebody else to do it.

X Q. 1125. Was the water ever dipped out of the bottom of the upper ice box?

A. I suppose it was.

X Q. 1126. Do you know of its ever having been dipped out?

A. I don't recollect to-day, except that this tub in the lower part was overflowing sometimes and we had the floor wet, and this was the only reason I put on this rubber hose, to draw the water off.

X Q. 1127. Then you had a tub in this closet underneath the upper ice box, did you?

A. Had kind of a tub underneath so as to have the water running into this, and when it was forgotten to empty it we had the water on the floor.

X Q. 1128. After you put the rubber hose on you had no trouble with the water, had you?

A. We had not.

X Q. 1129. All the water went down the hose?

A. Yes, sir; all the water went down if the pipes were clean so the water had a chance to run down, but I wouldn't say that they were always clean, and it might be they were stopped up and the water didn't run down them.

X Q. 1130. Do you know of their having ever been stopped up?

A. I don't recollect anything sure about it, but I am sure if they had to dip the water out the pipes were stopped up.

X Q. 1131. You would account for the fact that if they did dip the water out the rubber pipes must have been stopped up?

A. It was the pipes in the top of the ice box.

685 X Q. 1132. How far did these drip pipes extend into the upper ice box?

A. I think about five inches.

X Q. 1133. You have no recollection, then, of these rubber pipes being stopped up, have you?

A. I am not sure of it that they were stopped, but in the way that these men we had engaged attended to their business I am pretty sure that they didn't clean those pipes, just as we had complaints that the beer pipes were not cleaned, and those complaints we had very often.

X Q. 1134. If the rubber hose around the beer-supply pipes became stopped up, how were they cleaned out?

A. I couldn't say to-day how they were cleaned out, but it was an easy matter to take them off and clean them out, and I should think it was done on some occasions, but to-day I couldn't say who done it or how often it was done, but my opinion is they ought to have been cleaned out on some occasions.

X Q. 1135. Haven't you already testified during the course of your

cross-examination that those rubber pipes were never taken off after you put them on?

A. Never taken off. This wouldn't say they were taken off and cleaned and put on again.

X Q. 1136. Haven't you testified that they were never taken off after you put them on?

A. It is understood they were never taken off entirely and left off.

X Q. 1137. You mean they were taken off and put back?

A. I mean if they cleaned them they had to take them off and clean them and put them on again.

X Q. 1138. Do you know of their having been taken off?

A. I couldn't say, but it is my opinion they have been taken off and cleaned.

X Q 1139. You never took them off, did you?

A. No, sir.

X Q. 1140. Do you know of anybody who did?

A. I couldn't say.

686 X Q. 1141. If they were taken off, who took them off?

A. Some of the men.

X Q. 1142. Give the names of some of the men who must have done it.

A. I gave the names of the people working there at the bar-room.

X Q. 1143. If the rubber pipes were stopped up and they were not taken off and cleaned the water would have to be dipped out, wouldn't it?

A. So it appears, but the main part where it was stopped up would have been in the top of the tin pipes, and this might have been cleaned out without taking off the hose, but if this was done or not I don't know anything to-day.

X Q. 1144. Is there anything the matter with your recollection to-day?

A. Well, I guess I feel quite tired, for I don't expect to be much better this afternoon.

X Q. 1145. The fact that you are tired affects your recollection, does it?

A. Well, I wouldn't like to make a fool out of myself to answer such questions.

X Q. 1146. Don't you think you have made a fool out of yourself by the answers you have given here?

A. Well, I don't think so.

X Q. 1147. What do you think and what would you say of a man who within twenty-four hours has contradicted himself not less than fifty times, and would you believe a man who did that?

A. I wouldn't answer such questions at all.

X Q. 1148. Would you believe a man who within twenty-four hours had contradicted himself not less than twenty-five times, to say the least?

A. I wouldn't answer such insulting questions as this.

X Q. 1149. Do you understand you are here to answer whatever I ask you?

A. I guess not.

X Q. 1150. Would you believe a man who within twenty-four hours, when testifying under oath, had contradicted himself not less than twenty-five times?

687 Defendants' counsel objects to this manner of examining the witness, and that it is done for the purpose solely of tiring the witness out and, if possible, to annoy the witness and for no other purpose.

A. Well, if I should answer this I would say if he had done so I wouldn't believe him.

X Q. 1151. Then if, as a matter of fact, it should appear that you have done so, then you are not entitled to belief. Isn't that so?

A. If I have done so you need not believe anything at all.

X Q. 1152. Do you remember of having testified, when examined as a witness in the McKay and Welker cases, as follows: "X Q. 80. What has become of that hose? A. There are some of them there. Sometimes we had to change them—take off the old and put on the new. Q. How often did you have to change the rubber hose? A. Not very often; only when they were in too bad condition, too dirty. Why, we would have to take them out and wash them or put on new. X Q. 87. How often did you have to wash them? A. I should think about twice a year"?

A. I was of the opinion, and I am of the opinion to-day, that this ought to have been done; but I am not sure to-day that it has been done or not.

X Q. 1153. You are sure, however, on the 20th day of December, 1882, that that had been done, wasn't you?

A. I was sure so far as I had advised our men to keep everything clean, and it was my opinion that they had done so; but now some of those that have been working there may say to-day that they never have done so and have neglected their duty, and I couldn't say they have done it if they say they have not.

X Q. 1154. Then on the former occasion you swore to a thing as a fact based upon the idea that you had told some of your
688 employés to do so and so and that they had done so and so?

A. Of course, I thought it was done, and if they haven't it wasn't my fault.

X Q. 1155. Did you ever tell anybody in your employ to put new rubber hose around the beer-supply pipes?

A. I don't recollect if I did or not, but I think it was done.

X Q. 1156. You think now it was done, do you?

A. Yes, sir; I think it was done.

X Q. 1157. Haven't you testified this morning, and also last evening, that new rubber hose was never put around those beer-supply pipes?

A. A new rubber hose? Pieces of an old one, I said.

X Q. 1158. Haven't you testified this morning and yesterday afternoon that you never put rubber hose around those beer-supply pipes but once?

A. That I never did?

X Q. 1159. Yes.

A. I suppose so.

X Q. 1160. Is it a fact or is it not?

A. It is a fact that I never put any other piece on, so I guess I testified to it.

X Q. 1161. Didn't you also testify that no one else ever put any rubber hose around those beer-supply pipes except the one which you claim to put around?

A. I don't know now. If I said so I am sure there was no new hose ever put on, but I don't think I said no other pieces were put on. All that was put on were pieces of the old hose that we had.

X Q. 1162. If you said so, do you stick to it or don't you?

A. I don't know what you mean by this.

X Q. 1163. Haven't you testified during the course of your cross-examination that no one except yourself ever put rubber hose around those beer-supply pipes?

A. If I said so I can't explain how I did, because I am not sure that any one else put rubber pipes on. They might have done and might not.

X Q. 1164. Did you ever tell any one to do it?

A. I am sure I told them to clean it out.

689 X Q. 1165. Did you ever tell any one to put other rubber hose around the beer-supply pipes than those which you put there?

A. I don't recollect that I told some one to put other hose on if the old one was good yet, so the idea was to use the old ones.

X Q. 1166. Did you ever tell any one to take those rubber pipes off?

A. I don't recollect anything about this.

X Q. 1167. So far as your recollection goes, after putting the rubber pipe around the beer-supply pipes, as you claim you did, were they ever touched, taken off for cleaning, or others substituted?

A. For my part, I think they were taken off and cleaned out, but, of course, I couldn't say which man or who of them, or at what time they took them out or cleaned them, or if they cleaned them or not, but I am quite sure they ought to have been cleaned so as to have the water run down as the intention was.

X Q. 1168. Never mind what ought to have been done. Tell me what was done.

A. I wasn't there all the time, so I couldn't say what was done. I am sure those men never do what their duty is exactly.

X Q. 1169. Why did you testify in the Welker and McKay cases, when you knew nothing about it, that the rubber hose around the beer-supply pipes were washed about twice a year?

A. This ought to have been done. To-day I don't recollect if it was done or not, and therefore I wouldn't say to-day if it was done. It possibly may have been done and may have been neglected.

X Q. 1170. Why did you when you were examined in the McKay and Welker cases testify that "sometimes we had to change them," referring to the rubber hose which you put around the beer-supply pipes, "and take off the old one and put on now"?

A. I know that we had old hose and it was used up for
690 such purposes, and I didn't recollect otherwise than such pieces were cut off from the hose to be used there again.

X Q. 1171. Then when you testified in the McKay and Welker case you knew, didn't you, that you had not changed that, and that no one else had changed them so far as you know?

A. I wouldn't say. I am duite sure that so many years ago I intended to say exactly how everything was done.

X Q. 1172. Doesn't it appear now that when you did testify in the McKay and Welker cases you testified to that of which you knew nothing about?

A. Of which I know nothing about it to-day or not as much as I did five years ago.

X Q. 1173. So far as you know to-day isn't it the fact that you never took off the old hose surrounding the beer-supply pipe and put on new or any other ones?

A. I don't recollect to-day that I did or not.

X Q. 1174. What do you suppose you would say in reference to these rubber pipes and their having been removed and others substituted if you were called as a witness to-morrow?

A. To-morrow I might know just as much of it as to-day, but five years afterwards I might know very little about it.

X Q. 1175. If you should happen to be called as a witness again a year from now you would expect then to tell a different story from what you told to-day, would you?

A. I might perhaps not come up at all.

X Q. 1176. You knew when you came here to testify that you didn't have to come, didn't you?

A. I thought it would be my duty to come here.

X Q. 1177. Why your duty to come?

A. Because this is an action of a few against a great body of people and I thought it was a wrong, and therefore I thought it my duty to come here.

X Q. 1178. Your duty to whom?

A. My fellow-citizens.

691 X Q. 1179. Your fellow-barkeepers?

A. Yes, sir; but I suppose they are citizens as well as you are.

X Q. 1180. You would regard them as good citizens if their character is judged by the standard you have given to-day, would you?

A. I think they are just as good citizens as others.

X Q. 1181. What do you think your fellow citizens and barkeepers will say of you when they understand you have come on the stand and said under oath and said you wouldn't believe them under oath when their business is at stake?

A. They know as all of us that as soon as their business interests are at stake that they are not bound by law to say the truth.

X Q. 1182. It is your understanding that when a man's business is at stake he is not bound by law to tell the truth under oath, do you?

A. I am of the opinion that if his business interests are at stake

that he can't be made to say all about his business. That is my understanding about it. I am quite sure Mr. Bartholomay wouldn't tell all about his business if he was asked.

X Q. 1183. You think Mr. Bartholomay if he was asked about his business would lie about it under oath if it was to his interest to do so, do you?

A. I wouldn't say he would not say all about it, but it is my opinion that he has some reason to withhold some parts of his business interests.

X Q. 1184. And therefore he would not tell the truth under oath on that account?

A. I wouldn't say he would or he wouldn't, but I think in general the business men will not do it.

X Q. 1185. Do you think your business character is judged by your fellow-citizens in Rochester by the standard you have given here?

A. I am quite sure that my character is judged by every one in the city as good as any one else.

692 X Q. 1186. Do you think any of your fellow-citizens realize the fact that you are a man of such a depraved character that you would swear to a lie where your business interests were at stake?

Defendants' counsel objected as irrelevant and impertinent and the counsel is requested not to use such language to the witness, who is a man of twice his years or more and if for no other reason should have respect for age.

Complainant's counsel declines to respect age when it appears that the person is, of his own doings, reflecting upon the entire community by saying that not only himself but his fellow-citizens are not to be believed under oath when their business interests are at stake, and, furthermore, that complainant's counsel is unwilling to accept such a rule as the correct one to measure the character of the citizens of Rochester, and so long as the witness has seen fit to interject his standard of morality into this examination he proposes to follow it just as long as he desires, that the court may understand the character of the witness on the stand and what his testimony is worth, even though it may be under oath.

A. My business interests ain't at stake at all in this lawsuit.

X Q. 1187. But if your business interests were at stake in a lawsuit you would expect to lie if it was necessary, wouldn't you?

A. I guess I wouldn't.

X Q. 1188. Haven't you said that when your business interests were at stake you would be justified in saying that which wasn't the truth?

A. I haven't said so.

X Q. 1189. What have you said on that score?

A. I have said that, as a general rule, people where their
693 business interests are at stake don't say the truth, and that is all I have said, but I never have said I would do so.

X Q. 1190. Aren't you one of the people?

A. Yes, sir; that is so; but, as I said before, lawyers are to be excepted, and I suppose I might be excepted just as well.

X Q. 1191. Didn't you say within the last half hour that you considered yourself as coming within the rule which you have laid down for your fellow-citizens?

A. I guess I said I would do the best for them, but I never intended to say I would say a lie for them, and have no reason to do so.

X Q. 1192. I ask what you would do for yourself.

A. For myself I would do nothing in this case at all.

In order to acquaint the court with the manner of this cross-examination of the witness Meinhard that has been conducted by complainant's counsel, who has deliberately tried to mislead the witness and convey a wrong and erroneous impression to the court of the testimony formerly given by the witness in the case of Magin against Welker and McKay, the defendants' counsel offers in evidence the testimony of the witness Meinhard, given in the suits of Magin against Welker and McKay and Forest, to inform the court fully as to the facts.

The commissioner is requested to mark each page of the testimony.

Marked Defendants' Exhibit Meinhard's Testimony.

Further cross-examination by Mr. BENNETT:

X Q. 1193. Is this a copy of your affidavit given in the case of Magin against Welker?

A. I guess it is the affidavit. I haven't read it all through, but I think it is.

694 The complainant's counsel offered in evidence the copy referred to by the witness, which it is admitted by the defendants' counsel is a correct copy, and the same is marked Complainant's Exhibit of Meinhard Affidavit of December 26, 1885.

Redirect examination by Mr. SULLIVAN, counsel for the defendants:

R. D. Q. 1194. The complainant's counsel, in his cross-examination, endeavored to convey the impression that you were not tall enough to put on this rubber hose on the beer-supply pipes alone. Please describe how you put the rubbber hose on.

A. I don't recollect all the details just now, but I suppose I had to stand on some kegs in the ice-house to reach up.

R. D. Q. 1195. I ask you to explain to the court how you put the rubber pipes on.

A. I took off first the rubber hose at the ends of the supply pipes and drawed this rubber over the supply pipes and pushed it through the hole in the ice-house and took them afterwards to shove them up through the floor, and this box under the upper ice box was fastened there to the tin pipes.

R. D. Q. 1196. Did you find any difficulty in doing so?

A. Not at all. It was quite easy to do it.

R. D. Q. 1197. Please look at this model, Defendants' Exhibit Meinhard Apparatus Model, and state if there could be seen as much of the rubber pipes in the lower cellar as is shown on this model.

Objected to as leading and, further, that the witness has already identified the model as being correct in that respect.

A. I think the hose was, in proportion to this model—the hose was smaller and could scarcely be seen as well as it could be seen here in this model.

695 R. D. Q. 1198. Why couldn't as much of the rubber hose be seen in the cellar in your apparatus as is shown in this model?

A. Because the greater part of it went between the joist, the floor joist, and only the ends of it right in the ice-house, and only a small part of it could be seen.

R. D. Q. 1199. A person going into your cellar, could he see that rubber hose without the use of a light?

A. They could not, because the cellar was pretty near dark generally, and only being windows in front of it.

R. D. Q. 1200. And could a person who is in the lower ice box see the ends of the rubber hose which came through the box without using a light for that purpose?

A. Without a light he could see nothing in the ice-house at all excepting at the door.

Complainant's counsel requests that the witness, Meinhard, sign the stenographic notes, as is usual where the testimony is taken stenographically.

Defendants' counsel states that if it is customary to sign such notes, which is not the practice in our State court, Mr. Meinhard has no objection and will do so.

(Signed) JOHN MEINHARD.

STATE OF NEW YORK, } ss:
County of Monroe, }

On this the 25th day of January, 1888, before me personally appeared the above-named John Meinhard, and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

GEORGE F. SLOCUM,
Notary Public.

696 United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
v.
JOHN J. KARLE.

SAME
v.
JOHN H. LEHMAN.

OCTOBER 24, 1887.

Parties appeared as before.

It is hereby stipulated that the examiner's fees be fixed at the sum of ten dollars per day, and that the plaintiff is to pay three-fifths of the stenographer's fees and the defendants two-fifths, which sums are hereby fixed as the taxable costs in these cases for such services.

WILLIAM BARR, Jr., being sworn, doth depose and say, in answer to interrogatories proposed to him by JOSIAH SULLIVAN, the defendants' counsel, *testified* as follows:

Q. 1. What is your name, age, residence, and occupation?

A. My name is William Barr; residence, 10 Wentworth; age, 36; occupation, plumber, gas fixtures, etc.

Q. 2. How long have you resided in Rochester?

A. A little over thirty-six years; I was born here.

Q. 3. And how long have you worked at your trade?

A. Over twenty years.

Q. 4. Did you know the firm of Gilbert & Meinhard?

A. Yes, sir.

Q. 5. When they carried on business in Falls Field, in this city?

A. Yes, sir.

Q. 6. Did you at any time make any repairs on a beer-cooling apparatus that they used in their saloon in Falls Field?

A. I did.

Q. 7. When was that?

A. I couldn't remember the exact date; some time in 1877 or 1878.

Q. 8. What did you do on this apparatus?

A. One of the tin-lined pipes coming down from the upper box to the lower box was broken and I soldered it together.

Q. 9. How many did you solder?

A. I think it was two.

Q. 10. Any person assist you?

A. Yes, sir; I had a helper there.

697 Q. 11. Who was it, do you recollect?

A. I think it was Johnnie Shroth. I am not sure, though. I think it was him, but I am not positive.

Q. 12. While repairing that apparatus did you examine its construction?

A. Yes, sir; somewhat.

Witness shown model and asked:

Q. 15. Please look at this model and state how that compares with the apparatus which you repaired for Gilbert & Meinhard.

A. I don't know; it don't look much like it, because you couldn't see the whole thing, as that shows it there.

Q. 14. What part of this apparatus did you repair?

A. The pipes in the lower box.

Q. 13. The pipes in the lower ice box?

A. Yes, sir.

Q. 16. And what did you do on those pipes?

A. I soldered the pipes together; they became broke.

Q. 17. How many lead pipes were there running from the kegs in the collar to the ice box in the saloon?

A. I think there was three or four.

Q. 18. Were they fastened to the beer kegs in the lower ice box?

A. I think they had the piece of rubber hose connected from the *from* tin-lined pipe to the faucet to the barrel cock.

Q. 19. Did you also examine the upper ice box?

A. Yes, sir.

Q. 20. Please state what was inside the upper ice box.

A. There was coils of pipe inside of the upper ice box, and I had to take one of them out to repair it.

Q. 21. Do you recollect how many coils there were?

A. I think it only coiled around once.

Q. 22. What else did you see in the upper ice box beside this coil?

A. I saw a lot of dirt and slime, and followed down inside of the pipe.

Q. 23. How did the water in the upper ice box get out of it?

A. Dripped through the pipes outside of these beer pipes into the big ice box down-stairs.

Q. 24. What kind of pipes were outside of the beer pipes?

A. I don't remember what kind of pipes they were.

698 Q. 25. Do you recollect the size of them?

A. I know they were pretty small because I had hard work to get the pipes down that I took out.

Q. 26. Of what kind of material were those pipes made of which surrounded the beer-supply pipes?

Mr. Bennett objected as leading.

A. I couldn't say.

Q. 27. Were they fastened into the bottom of the upper ice box?

A. Yes, sir—that is, I am pretty sure they were.

Q. 26. How were they fastened?

A. They were soldered.

Q. 29. Did they extend above the bottom of the upper ice box?

A. Not very far; no, sir.

Q. 30. About how far?

A. There wasn't half an inch, to the best of my recollection.

Q. 31. Did they go below the bottom of the upper ice box?

A. Yes, sir.

The attention of the court is directed to the leading character of the examination of this witness.

Q. 32. How far below?

A. I couldn't say exactly.

Q. 33. About how far?

A. I don't think over four or six inches.

Q. 34. What became of this water in the upper ice box?

A. It had to pass through these other pipes into the large ice box; that is the only way I could see for it to go down.

Q. 35. You say other pipes. Which ones do you mean by that?

A. Outside of the beer pipes; the pipes that carried the beer pipe down to the lower ice box.

Q. 36. Was there anything outside of those pipes that were fastened into the bottom of the upper ice box?

A. Not as I know of; no, sir. I am not sure whether there is or not.

699 Q. 37. Was there anything fastened to the lower end of those tin pipes?

A. No, sir.

Q. 38. How would the water pass out of the upper ice box into the lower ice box?

A. Flowing through these outside conduct pipes and following down the beer pipes. I know the beer pipes were all slimy.

Q. 39. What were those outside conductor pipes made of?

A. I don't know whether they were galvanized iron or tin, but they were metal of some kind I am pretty sure.

Q. 40. Was there any rubber pipe attached to them?

Complainant's counsel, Mr. Bennett, objected as leading and highly improper, and especially that the witness has in his own language described the pipes—the material of which they were made.

Q. 41. Was there any rubber pipe attached to the tin or metal pipe?

A. I am sure I couldn't say.

Q. 42. While in this lower ice box did you notice the ends of the rubber pipe which covered the supply pipes?

Same objection as before, and further objected to for the reason that the witness has not stated that the beer-supply pipes were covered with rubber pipe, and further objected to for the reason that the witness has not stated that there were any rubber pipes and as being an attempt to put language in the mouth of the witness, and the attention of the court in considering this last objection is especially directed to the very full statements of the witness heretofore made.

A. I don't know whether they were rubber or what they were. They were open, whatever they were made of. May I ask a question? Where the question was asked me where the pipe into the upper ice box—what it was.

700 Q. 43. And you said it was tin or metal?

A. Yes; I said it was tin or metal, or some metal.

Q. 44. Go right on.

A. From that connection down there I don't know whether it was hose or what it was. I know it was an open end, to the best of my recollection.

Q. 45. While repairing those pipes did you have any trouble about the water flowing down?

Objected to as leading.

Q. 46. And, if so, you may state what it was.

A. All the trouble we had the pipe was full of slime and we had to scrape them and clean them. There was more trouble with that. We had to clean the pipe thoroughly way up above.

Q. 47. Did you look into the lower part of the upper ice box?

A. No, sir; I don't think there was a box there at all.

Q. 48. Did you look into this cupboard below the ice box?

A. No, sir.

Q. 49. From the appearance of the lower end of those pipes which covered the supply pipes, of what kind of material would you say they were made of?

A. I couldn't say.

Q. 50. How far did they run into the lower ice box?

A. Which pipe do you mean, the beer pipe?

Q. 51. The pipes that covered the beer pipes.

A. Between four and six inches.

Q. 52. Now, you will please describe more fully how the water in the upper ice box would pass out into the lower ice box.

Objected to, as the witness has already stated that he did not know, having made no examination with that object in view.

A. Beg your pardon; I didn't say that. As the ice condensed it went down through these tubes that the beer pipe passed
701 through and run into the lower ice box and that top was set on; it was up higher than that represents it there (referring to the model).

Q. 53. Referring to the upper ice box in the model?

A. Yes, sir; from the doors up—those little doors.

Q. 54. Was there any other way for this water in the upper ice box to pass out except in the way you have described?

A. Not as I could see, unless it run over.

Q. 55. Ran over what?

A. The tops of the box got full.

The model offered in evidence and marked Defendants' Exhibit Meinhard Apparatus.

Objected to, as the model has not been identified.

Cross-examination by Mr. BENNETT, counsel for the complainant:

X Q. 56. You said a moment ago, referring to this model before you, that the ice box was located higher up from the floor; you

said in substance that the lower ice box was higher up from the floor than shown in this model. How much higher from the floor?

A. This part here was up higher.

(Pointing to the upper part of the ice box.)

X Q. 57. How far was the upper ice box above the floor?

A. From the faucets I think it was about four foot eight; I should judge that.

X Q. 58. How far were the faucets from the bottom of the upper ice box?

A. About nine inches.

X Q. 59. Then it was about four feet from the bottom of the upper ice box to the floor of the saloon?

A. Yes, sir; very near that.

X Q. 60. Am I correct in understanding you to have stated that you did not look into the apartment or closet beneath the bottom of the upper ice box?

702 A. I might have looked there, but I couldn't do nothing in there.

X Q. 61. You have no recollection of looking in there, have you?

A. No, sir.

X Q. 62. How do you know that the water did not pass into the buckets placed on the floor of that closet?

A. Well, I don't know, only I can judge. I pulled one pipe out from the cellar and fixed it and put it down again and that is all, out of that tube or pipe.

X Q. 63. You understand, of course, that you are here to testify to facts and not as to your judgment, don't you?

A. Yes, sir; to my recollection. Of course, it is ten years and over since.

X Q. 64. Have you seen this Meinhard apparatus since you repaired it on that occasion?

A. Yes, sir.

X Q. 65. When did you see it last?

A. I was working there for three or four weeks, right there at one time.

X Q. 66. When was that?

A. When they fixed over the theatre—when they first leased it or the next year.

X Q. 67. Was that before or after you repaired these pipes in the lower ice box that you have been testifying to to-day?

A. I think it was after. I fitted up the new building after — the ice box in.

X Q. 68. After repairing the pipes in the lower ice box, when next did you have occasion to do anything to this Meinhard apparatus?

A. I think it was two years after that.

X Q. 69. What did you do.

A. I put in the soda-fountain apparatus.

X Q. 70. Did that soda-fountain apparatus have anything to do with this beer-cooling apparatus?

A. The cooling apparatus had something to do with that to cool the seltzer or soda.

X Q. 71. My question is: Did the putting in of that soda-water apparatus have anyting to do with this Meinhard beer-cooling apparatus?

703 A. I went through it. There was a coil of block-tin pipe put in that box and faucet on top and the fountain was down-stairs in the cellar.

X Q. 72. Then the pipe leading from the fountain in the cellar to the saloon ran through this beer-cooling apparatus?

A. Yes, sir.

X Q. 73. At the time you put in this soda-water apparatus were you in the business for yourself?

A. No, sir.

X Q. 74. Who were you employed by?

A. By H. Mutschler—Herman Mutschler.

X Q. 75. Can you fix the year when you put in this soda-water apparatus?

A. No, sir.

X Q. 76. Do you think it was as late as 1881?

A. No, sir.

X Q. 77. Was it in 1880?

A. No, sir.

X Q. 78. Was it before or after 1880?

A. It was before.

X Q. 79. How long before?

A. I can't state; maybe a year and maybe only three months.

X Q. 80. Have you any way in which you can fix the time?

A. No, sir; only getting Mutchler's books and looking at the time they were charged.

X Q. 81. Mr. Mutschler kept the books, did he?

A. Yes, sir.

X Q. 82. Mr. Mutchler engaged in business in Rochester the present time?

A. No, sir.

X Q. 83. Who has possession of Mr. Mutchler's books?

A. His son.

X Q. 84. He is in business, is he?

A. Yes, sir.

X Q. 85. Carrying on the same kind of business?

A. No, sir.

X Q. 86. What kind of business does Mr. Mutschler's son carry on at the present time?

A. Crockery business; his father carried on the crockery business at that time, too.

X Q. 87. Did the pipe that passed from the soda fountain in the cellar follow the same course up and through the floor and

704 through the upper beer box that the beer-supply pipe did?

N. No, sir.

X Q. 88. How do that pipe go? Don't refer to any model.

A. It went outside of the box and then in and around and then up the box and out again and up the sides of the box.

X Q. 89. You put that pipe in, did you?

A. Yes, sir.

X Q. 90. At that time did you examine this beer-cooling apparatus?

A. No, sir; not to examine it. I had to take the ice all out of the upper ice box to put the coil in.

X Q. 91. To put ths coil of the soda-water pipe?

A. Yes, sir.

X Q. 92. What was in that ice box when you took the ice out to put the coil of soda-water pipe in?

A. There were coils of beer pipe.

X Q. 93. Was there one coil for each beer-supply pipe?

A. Yes, sir.

X Q. 94. And you put this soda-pipe coil afongside of the beer coil?

A. Yes, sir; on top of it.

X Q. 95. How many beer coils were there in the bottom of that ice box at that time?

A. I think about three or four.

X Q. 96. Did you find the condition of things in the bottom of the upper ice box when you put in the soda-water pipe the same as when you examined the apparatus in 1877 or 1878?

A. Yes, sir.

X Q. 97. When after you put in this soda-water pipe, if ever, did you see this Meinhard apparatus?

A. Afterwards?

X Q. 98. Yes.

A. I saw it when I took it out—took the soda fountain *b*ut.

X Q. 99. When did you take the soda-water fountain out?

A. About two or three weeks afterwards.

X Q. 100. What examination did you make at that time of the Meinhard's beer-cooling apparatus?

A. I didn't make any.

X Q. 101. When, after taking out the soda-water fountain pipe, did you see or examine this Meinhard apparatus?

A. I never did examine it.

705 X Q. 102. After that you never saw this Meinhard beer-cooling apparatus, as I understand you?

A. No, sir; I don't think I did.

X Q. 103. Under whose instructions did you put this soda-water fountain in?

A. Henry Schnarr.

X Q. 104. Weren't you working at that time for Mr. Mutschler?

A. No, sir.

X Q. 105. Was Mr. Mutschler alive or dead?

A. He was alive.

X Q. 106. How long after that did he die?

A. I couldn't say.

X Q. 107. A month?

A. Yes, sir; over a month.

X Q. 108. Six months?

A. I couldn't say.

X Q. 109. You can't recollect when Mr. Mutschler died?

A. Yes, sir.

X Q. 110. When did he die?

A. He died in April, I think, 1880, or along 1881, I think—March or April.

X Q. 111. Are you certain he died in 1881?

A. No, sir; I am not certain, but I am pretty sure he died in March.

X Q. 112. Did you work for Mr. Mutschler at the time of his death?

A. No, sir.

X Q. 113. How long before his death had you left him?

A. I think a year and a month, or a year.

X Q. 114. How long before leaving Mr. Mutschler did you put this soda-water pipe in?

A. I couldn't say.

X Q. 115. Is your recollection so indistinct that you can't say when you put that in?

A. Yes, sir.

X Q. 116. Or about when?

A. Yes, sir.

X Q. 117. As a matter of fact, have you a very distinct recollection of any of the matters that you have been testifying to?

A. Yes, sir.

X Q. 118. Have you a very distinct recollection?

A. Yes, sir.

X Q. 119. Of what part of the matters you have been testifying to have you a very distinct recollection?

A. I recollect fixing beer pipes down in that ice box.

706 X Q. 120. But do you recollect the time when you fixed them?

A. Not exactly; no, sir.

X Q. 121. Do you recollect within a year of the time when you fixed them?

A. Yes, sir; either in 1877 or 1878.

X Q. 122. And what time in either 1877 or 1878?

A. It was in the spring of the year, I think, or fall. I ain't sure about that.

X Q. 123. You can't say whether it was in the spring or the fall?

A. No, sir.

X Q. 124. Or whether it was in 1877 or 1878?

A. No, sir; I was down there most every day—down in that neighborhood—and there is nothing to bring it to my recollection when it was.

X Q. 125. Haven't you since been in the habit of going down in that neighborhood?

A. Yes, sir; two or three times a day.

X Q. 126. Would you be willing to swear that you fixed those pipes in that lower ice box prior to the year 1879?

A. Yes, sir.

X Q. 127. How long prior to the year 1879?

A. It was two years prior to that.

X Q. 128. How long did it take you to fix those pipes in the lower ice box on that occasion?

A. It took me about three-quarters of a day, and I was doing little other jobs around there.

X Q. 129. What other jobs did you do around there?

A. Fixing the gas keys.

X Q. 130. Do you remember a gas light that was located in the lower ice box?

A. It was on the outside, I think.

X Q. 131. Whereabouts on the outside?

A. Right so you could swing it into the inside. I am not positive about that, though. I don't know whether he used candles for light or gas.

X Q. 132. Didn't you mend the beer-supply pipe where it had been burned off, so to speak, by this gas jet?

A. No, sir.

707 X Q. 133. You never repaired any of the beer supply pipes in that Meinhard apparatus but on this one occasion, did you?

A. That is all.

X Q. 134. Then is it not a fact that your knowledge of the Meinhard beer-cooling apparatus is limited to what you acquired at the time you repaired the beer-supply pipes in the lower ice box?

A. I don't understand you.

X Q. 135. (Question repeated.)

A. Yes, sir.

X Q. 136. Do you know who did the plumbing work in connection with the putting in of this Meinhard apparatus?

A. I don't know positive who did it. I have heard who did it, and that is all—by hearsay.

X Q. 137. Who did you hear was the party who did it?

A. Cassebeer—Adolph Cassebeer.

X Q. 138. And who told you that and when did you hear it?

A. I am sure I don't know who told me.

X Q. 139. Do you know when it was told to you?

A. About the time the other suit was going on.

X Q. 140. What other suit do you refer to?

A. To Mr. Magin and Welker and McKay.

X Q. 141. You knew of the pendency of those cases, did you?

A. Yes, sir.

X Q. 142. Do you also know of a beer cooling and drawing apparatus known as the Magin?

A. Yes, sir.

X Q. 143. When did you first hear of the Magin apparatus?

A. I am sure I don't know as I can tell what year.

X Q. 144. Is your recollection so indistinct that you can't tell when you first heard of the Magin apparatus?

A. Yes, sir; I never heard of it yet. It is the Gordon apparatus, isn't it?

X Q. 145. When did you first hear of the Gordon apparatus?

A. I couldn't tell you the year. I think Mr. Gordon put one into Charlie Englert's for the first one.

708 X Q. 146. When was that?

A. I couldn't say what year.

X Q. 147. Was it in 1878?

A. It might have been, or 1879.

X Q. 148. You can't say whether it was 1878 or 1879?

A. No, sir.

X Q. 149. Prior to seeing that Gordon apparatus had you ever seen a similar apparatus?

A. I have seen Meinhard's.

X Q. 150. I ask you if, prior to seeing Gordon's apparatus, you had ever seen a similar apparatus.

A. No, sir; with the exception of this of Meinhard's.

X Q. 151. Did you know, at the time you saw the Gordon apparatus, that Meinhard's was similar to it?

A. Yes, sir.

X Q. 152. How did you know that?

A. Because I seen Meinhard's and I seen Mr. Gordon's.

X Q. 153. Didn't you say on your direct examination that you did not make a close examination of the Meinhard apparatus?

A. No, sir; I did not. I said I didn't look into the drawers in that box.

X Q. 154. And didn't you say you didn't know of what material the pipes were made surrounding the beer-supply pipes?

A. Yes, sir.

X Q. 155. Do you mean to say that at the time you saw the first Gordon apparatus that you knew Meinhard's was like it?

A. It was similar—like it; yes, sir.

X Q. 156. What do you mean by "similar"?

A. The same principle; that is what I mean.

X Q. 157. Didn't you say in the fore part of your cross-examination that you couldn't say whether the water went from the upper ice box into the pails located on the floor of the closet underneath?

A. No, sir; I did not. You asked me if it could go there, if there was anything to hinder it, and I says no.

X Q. 158. There being nothing to hinder it, as a matter of fact do you know whether it did go there or not?

A. I know it did not.

709 X Q. 159. How do you know it?

A. Because I saw the water running down those pipes.

X Q. 160. Is that any reason why part of the water, or all the water, could not have gone into pails placed in this closet under the upper ice box?

A. It don't look feasible to me.

X Q. 161. Without reference to what is feasible or your judgment,

and bearing in mind that I am asking you as a fact, do you know whether the water did or did not go from the upper ice box into pails in the closet underneath?

A. I don't know.

X Q. 162. Have you seen the Meinhard apparatus before you saw the Gordon?

A. Yes, sir.

X Q. 163. How long before?

A. I couldn't say exactly.

X Q. 164. Was it a month before?

A. Oh, yes, sir; longer than that.

X Q. 165. How long?

A. It was a year, if not more.

X Q. 166. Was it two years?

A. I couldn't say whether it was two or not.

X Q. 167. Who was with you when you first saw the Gordon apparatus?

A. I don't recollect who was with me.

X Q. 168. Mr. Gordon with you?

A. Mr. Gordon was around, I think.

X Q. 169. Of course, at that time you remembered this Meinhard apparatus, didn't you?

A. Yes, sir.

X Q. 170. Did you tell Mr. Gordon of it?

A. No, sir.

X Q. 171. Why didn't you?

A. Because it was none of my business. I wasn't acquainted with Mr. Gordon.

X Q. 172. Did you tell anybody else?

A. No, sir; not that I know of.

X Q. 173. When did you first tell a living soul that you knew of this Meinhard apparatus?

A. I don't know. I never told anybody hardly anything about it.

710 X Q. 174. You can't say who was the first person you mentioned it to?

A. No, sir.

X Q. 175. Nor when?

A. No, sir.

X Q. 176. When did you first put in an apparatus that was similar to the Gordon?

A. We never put one in exactly like Gordon's.

X Q. 177. When did you first put an apparatus in that was similar to Gordon's?

A. I couldn't say, I am sure.

X Q. 178. How many have you put in that were similar to the Gordon?

A. Oh, perhaps fifty.

X Q. 179. When did you put the first one in?

A. I couldn't say.

X Q. 180. Can you give me an idea as to the year when you put the first one in?

A. Put in the first one in 1880, I think.

X Q. 181. And that was after you had seen the Gordon apparatus, wasn't it?

A. Yes, sir.

X Q. 182. How many Gordon apparatuses had you seen before you put the first one in that was similar to it?

A. I don't know, I am sure.

X Q. 183. Had you seen as many as a dozen?

A. No, sir.

X Q. 184. Half a dozen?

A. No, sir.

X Q. 185. Did you put in the apparatus for either of the defendants in this case?

A. No, sir.

X Q. 186. Namely, Karle and Lehman?

A. No, sir.

X Q. 187. You know, don't you, that there is an association of beer saloon keepers in this city that is fighting the Magin patent?

A. Yes, sir.

X Q. 183. Are you a member of that association?

A. No, sir.

X Q. 189. Have you contributed anything towards it?

A. No, sir.

X Q. 190. Have you contributed anything towards the defense of the Magin patent?

A. Yes, sir.

X Q. 191. When?

A. Two or three years ago.

711 X Q. 192. Have you contributed anything since?

A. No, sir.

X Q. 193. Have you promised to?

A. No, sir.

X Q. 194. Why did you contribute towards the defense of the Magin patent?

A. Because we guaranteed to some of the people that we would stand the cost

X Q. 195. That is, you guaranteed some parties for whom you had put in a beer drawing and cooling apparatus that you would stand between them and the Gordon patent owned by Magin?

A. Yes, sir.

X Q. 196. Who did you guarantee to protect and indemnify against the Gordon patent?

A. I don't wish to answer that if I can get out of it.

Defendants' counsel stated that there was no objection to him answering it.

Complainant's counsel states, it appearing that the witness is interested in the defeat of the Gordon patent owned by the complainant Magin, they must insist upon the question being answered as

being a perfectly proper and legitimate question to propound to the witness under the circumstances.

X Q. 197. Question repeated.

A. Johnie Heisler.

X Q. 198. Had he been threatened with suit by Magin?

A. No, sir.

X Q. 199. Why, then, did you agree to indemnify him?

A. Because that was the time the other suits were going on.

X Q. 200. Who else have you agreed to indemnify?

A. Tony Klinck—I think it was Tony Klinck—some German. I meant to go there this afternoon, I know.

X Q. 201. Who else?

A. That is about all, I think.

X Q. 202. How many of these apparatuses have you put in?

A. About fifty.

712 X Q. 203. All in the city of Rochester?

A. No, sir.

X Q. 204. How many have you put in in Rochester?

A. Perhaps forty.

X Q. 205. And where did you put in the rest of them?

A. Around the countries and towns.

X Q. 206. Have they given good satisfaction and worked well?

A. When they take care of them; yes, sir.

X Q. 207. Do you know the royalty which the complainant demands under his patent for each and every apparatus?

A. Yes, sir.

X Q. 208. How much?

A. $50.

X Q. 209. You realize the fact, don't you, that if the Gordon patent is sustained you will have to pay that royalty of $50 upon your fifty apparatuses?

A. No, sir.

X Q. 210. You don't realize that fact?

A. No, sir.

X Q. 211. Have you from time to time seen certain circulars issued by the complainant?

A. No, sir.

X Q. 212. Never saw a circular issued by the complainant?

A. I saw one.

X Q. 213. What did that circular say, if you remember, about the patent?

A. I couldn't recollect what it was. It is quite a little while since I saw one and the only one.

X Q. 214. Do you remember of making an affidavit in the cases of Magin *vs.* McKay and against Welker?

A. Yes, sir.

X Q. 215. Where did you make that affidavit?

A. In the Merchants' bank.

X Q. 216. Did you set forth in that affidavit what you then believed to be the truth according to your best recollection?

A. Yes, sir.

X Q. 217. You knew for what purpose that affidavit was to be used, didn't you?

A. Yes, sir.

X Q. 218. And you knew the importance of the occasion, didn't you?

A. Yes, sir.

713 X Q. 219. How large were these coils to each of the beer-supply pipes that were placed in the bottom of the upper ice box?

A. There wasn't over three feet in the box in each coil.

X Q. 220. How many coils of the pipe to each coil?

A. One coil.

X Q. 221. And you saw these coils in the bottom of the upper ice box when, as you say, in 1877 or 1878 you repaired the Meinhard apparatus?

A. Yes, sir.

X Q. 222. And you saw them there again, did you not, when you put the soda-water pipe in?

A. No, sir; I can't say whether I did or not—not positive.

X Q. 223. Is your recollection so bad that you can't remember what you said during the fore part of your examination?

A. No, sir.

X Q. 224. Now, to test the value of your memory, have you or have you not said on your cross-examination that when you put the soda-water pipe in the upper ice box the beer coils were there?

A. Yes, sir.

X Q. 225. You have said so?

A. Yes, sir.

X Q. 226. Then why did you say a moment ago that you didn't remember whether they were there or not?

A. Well, I don't. I meant to say that then, the first time.

X Q. 227. Why didn't you say it?

A. I thought I did say it.

X Q. 228. Now you remember that you didn't say it. Is that it?

A. I said they were in or might have said I put them on top. Of course, I couldn't put them on the bottom of it.

X Q. 229. Didn't you say that you took the ice out of the upper ice box at the time you put the soda-water pipe in?

A. Yes, sir.

X Q. 230. And didn't you say that you then saw the beer coils in the bottom of the ice box?

A. No, sir.

714 X Q. 231. Now, did you or did you not see the beer coils in the bottom of the upper ice box when you put in the soda-water pipe?

A. I couldn't say whether I saw them or not. I am not positive.

X Q. 232. Isn't it your best recollection that they were there?

A. Yes, sir.

X Q. 233. And that was two years, you think, after you repaired the beer-supply pipes in the lower ice box?

A. About two years; between a year and two years.

X Q. 234. What was the height of the cellar at Meinhard's?

A. I think it was nine feet or nine or ten feet.

X Q. 235. From the floor of the cellar to the ceiling?

A. Yes, sir.

X Q. 236. Did the lower ice box run clear up to the ceiling of the cellar?

A. I don't think it did. I am not positive.

X Q. 237. How far from the ceiling?

A. I could stand erect in it and have plenty of room before my head and the ice box.

X Q. 238. How high are you?

A. Six feet.

X Q. 239. And do you think there was a foot between your head and the top of the ice box?

A. I think so; yes, sir.

X Q. 240. About a foot?

A. Yes, sir.

X Q. 241. And you think the height of the cellar was about ten?

A. Nine or ten.

X Q. 242. Would you say, then, that there was two or three feet between the top of the ice box and the ceiling of the cellar?

A. Well, I don't know how much. The box is raised off the floor a little. It was floored.

X Q. 244. Was there as much as a foot?

A. Yes, sir; I think there was, and that was cased up, too, and the box was cased to the ceiling. The casing was on the outside and the inside not so high and filled up with sawdust.

X Q. 245. Was there as much as two feet between the ceiling of the cellar and the top of the ice box?

A. No, sir; I don't think there was.

715 X Q. 246. Between a foot and two feet, you would say?

A. Yes, sir.

X Q. 247. As I understand you, you repaired the beer-supply pipes in the lower ice box?

A. Yes, sir.

X Q. 248. What was the matter with those pipes?

A. They broke off.

X Q. 249. All of them?

A. No, sir; there was two of them.

X Q. 250. Two of them?

A. Yes, sir.

X Q. 251. How many pipes were there in all?

A. I don't know whether three or four.

X Q. 252. Was it three or four?

A. I couldn't say.

X Q. 253. These two pipes were broken entirely off, were they?

A. Yes, sir; so they leaked, and we had to break them off to repair them.

X Q. 254. Did they leak on the upper or under side?

A. On the under side; in the lower box they leaked.

X Q. 255. I mean did the beer-supply pipes that you mended in the lower cellar leak on the upper or under side?

A. Turn it around one way and it would leak on top, and turn it around on the other it would leak at the bottom.

X Q. 256. Were those supply pipes so they could be readily turned?

A. Yes, sir.

X Q. 257. You had to break the pipes off to mend them, I understand you?

A. Yes, sir.

X Q. 258. Now, just what was the matter with those pipes?

A. There was one of them where they hooked up was an iron hook and moving it backward and forward cut the metal.

X Q. 259. And how was it with the other pipe?

A. I think the barrel or both of them—one was broke close to the ceiling and close so we couldn't fix it and had to pull it up to fix it.

X Q. 260. Pulled it up into the saloon?

A. Yes, sir.

X Q. 261. Up through the ice box?

A. Yes, sir.

716 X Q. 262. How did that enable you, then, to join it to the lower end of the pipe in the lower ice box?

A. Fixed it up on the floor and shoved it down.

X Q. 263. Then shoved it down?

A. Yes, sir; pulled it down, tied a string on it, and pulled it right down.

X Q. 264. Where was the trouble with the other pipe, at what part of the pipe in the lower ice box?

A. So I could fix it by bending it down right in the ice box.

X Q. 265. Was that the pipe that appeared to be leaking from the wear of the hook?

A. Yes, sir; both of them were leaking, I think.

X Q. 266. Where was the leak in this pipe that you mended in the lower cellar, about what portion of the pipe?

A. As the pipe came down and fastened on the ceiling of the box and a hook on it, and the weight of that on it broke it.

X Q. 267. That pipe leaked somewhere near the keg?

A. No, sir; that leaked near the top, and there was one run further over and that leaked further over where I could bend it down and fix it in the ice box, and the other was so short I couldn't get my soldering iron up.

X Q. 268. So one leaked up near the ceiling of the ice box?

A. Yes, sir.

X Q. 269. And the other further down?

A. Yes, sir.

X Q. 270. What was the appearance of those pipes when you first looked at them in the lower ice box; did they have a new or old appearance?

A. Kind of an oldish appearance; full of slime where they came down.

X Q. 271. How long should you say from the appearance they presented that they had been in use?

A. I couldn't say; they might have been in three weeks or three months.

X Q. 272. Or three years?

A. Yes, sir.

X Q. 273. What kind of pipes were they?

A. They were tin-lined pipes, to my best recollection.

X Q. 274. How thick?

A. Either a quarter or three-eight-s pipe.

717 X Q. 275. That is the diameter of the pipe?

A. Yes, sir.

X Q. 276. What was the thickness of the metal?

A. Less than a sixteenth of an inch.

X Q. 277. And that had worn through by this shifting upon that hook?

A. Yes, sir.

X Q. 278. How far down the side of the lower ice box did this beer-supply pipe enter the lower ice box?

A. About four or six inches.

X Q. 279. About four or six inches from the top?

A. Yes, sir.

X Q. 280. That is, measuring from the top of the inside, I suppose?

A. Yes, sir.

X Q. 281. And how thick was the top or the ceiling of the ice box?

A. I couldn't say.

X Q. 282. How thick was the side of the ice box?

A. I couldn't say; I didn't examine that at all.

X Q. 283. As I understand you, you didn't examine the beer-supply pipes except inside of the lower ice box and inside of the upper ice box?

A. Yes, sir.

X Q. 284. So you don't know how these pipes ran from the upper and lower ice box, do you?

A. Yes, sir.

X Q. 285. How do you know it?

A. They ran down and offset into the box.

X Q. 286. They ran first down?

A. Yes, sir.

X Q. 287. How do you know that, when you told me a moment ago that you hadn't looked into the closet underneath the ice box?

A. They couldn't run up from that; my own judgment tells me that.

X Q. 288. Do you know whether the beer-supply pipes ran down through the closet underneath the upper ice box?

A. Not positive; no, sir.

X Q. 289. You said they ran down and then off?

A. Yes, sir.

X Q. 290. How do you know they ran off, even assuming that they ran down?

A. Because the ice box wasn't directly underneath the upper box.

718 X Q. 291. How far was the upper box off from the lower ice box?

A. I don't recollect how far. It might have been a foot, but not over two feet, I don't think.

X Q. 292. You would say about two feet?

A. Yes, sir.

X Q. 293. You have referred to certain pipes that projected through the bottom of the upper ice box. How far did they project into the upper ice box?

A. Not over a very little ways—just enough to solder it, I think.

X Q. 294. That would be about a half an inch, wouldn't it?

A. Yes, sir; or a quarter of an inch.

X Q. 295. Don't you recollect that those tin pipes extended up four or five inches above the bottom of the ice box?

A. No, sir.

X Q. 296. Now, look at this model and then say whether that model is correct or not in that respect.

A. No, sir; I thought that was cut down lower than that.

Witness looks at model.

X Q. 297. Don't you remember that there was two or three inches of water in the bottom of the lower ice box?

A. No, sir.

X Q. 298. Don't you remember that this tin pipe extended sufficiently far into the upper ice box and above the bottom so that the beer coils in the bottom of the ice box were always covered with water and purposely intended so?

A. I don't recollect that; no, sir.

X Q. 299. When you examined the upper ice box the day that you repaired the pipes in the lower ice box was there any water in the upper ice box?

A. I couldn't say, I am sure.

X Q. 300. As you noticed it, was the construction such that the melting of the ice would go off at once into this drip?

A. I couldn't say whether there was *was* any in the upper ice box or not.

719 X Q. 301. You did say, didn't you, that this tin pipe only extended up into the upper ice box sufficient to solder?

A. I said I thought that was it.

X Q. 302. Well, if that was so, then the drippings from the ice must have gone directly off into that waste pipe?

A. Yes, sir; into this tin pipe or whatever metal they were made of.

X Q. 303. You don't know where those tin pipes went to, do you?

A. Into the lower ice box.

X Q. 304. How do you know that?

A. Well, I know it; I saw one end in the box and the other end in the ice box.

X Q. 305. In the lower ice box you saw the end of the tin pipe, did you?
A. Yes, sir.
X Q. 306. You distinctly remember that, do you?
A. I didn't say tin pipe, but of the pipes.
X Q. 307. What were those pipes?
A. I couldn't say.
X Q. 308. Were they metal pipes?
A. I think they was; they might have been galvanized iron; I don't think they were rubber.
X Q. 309. You don't think they were rubber?
A. No, sir.
X Q. 310. You think they were metal of some kind?
A. Yes, sir.
X Q. 311. Quite certain of that?
A. Yes, sir; pretty sure.
X Q. 312. You are positive they were not rubber.
A. No, sir; I am not.
X Q. 313. You think they we- not rubber?
A. Yes, sir.
X Q. 314. You are not positive of what metal they pipes were made that extended into the bottom of the upper ice box?
A. No, sir.
X Q. 315. Didn't you say tin pipes?
A. I said they was tin pipes.
X Q. 316. You are certain they were tin pipes?
A. I said if they were tin pipes.
X Q. 317. Were they metal pipes?
A. Yes, sir.
720 X Q. 318. And they were soldered?
A. Yes, sir; to the best of my recollection; I didn't solder them.
X Q. 319. You don't remember seeing they were soldered?
A. No, sir.
X Q. 320. Aside from the fact that you saw metal pipe extending into the lower ice box?
A. I thought they were metal pipes.
X Q. 321. Do you know where the pipes that extended up into the upper ice box went to?
A. They went to the upper ice box.
X Q. 322. My question is, Do you know where the tin pipes that extended through the bottom of the upper ice box went to?
A. No, sir.
X Q. 323. You do know, however, as I understand your testimony, that some metal pipes projected out from the side of the lower ice box?
A. I told you I thought they were metal pipes projected out.
X Q. 324. Have you any reason to believe they were not metal pipes?
A. No, sir.

X Q. 325. Have you any reason to believe that they were metal pipes, then?

A. No, sir.

X Q. 326. Why do you say they were metal pipes, then?

A. Because I have an idea that they was metal by taking them apart.

X Q. 327. You remember taking them apart?

A. Yes, sir.

X Q. 328. And the one which you did take apart was metal?

A. Yes, sir; I am pretty sure it was metal.

X Q. 329. And, as you remember it, the other pipes were metal?

A. Yes, sir.

X Q. 330. How far did these metal pipes, as you recollect them, extend out from the side of the lower ice box?

A. I don't understand your question.

X Q. 331. How far did this metal pipe project out from the side of the lower ice box?

A. Well, about a foot or two feet.

X Q. 332. Was it a foot or two feet?

A. Well, about that.

721 X Q. 333. About two feet?

A. About one or two feet.

X Q. 334. Between one and two feet, would you say?

A. Yes, sir.

X Q. 335. How many of these pipes were there?

A. Well, there was either three or four there. I don't recollect which.

X Q. 336. You can't recollect how many?

A. No, sir.

X Q. 337. Didn't you recollect at the time you gave your affidavit in the cases of Magin against McKay and Welker?

A. No, sir. I might a little better then. That is two or three years ago. I can't recollect all these things. We are doing thousands of jobs a year.

X Q. 338. It is a pretty difficult thing for you, isn't it, considering the fact that you are a plumber and have almost daily to put in and take out pipes and repair them, to say just what you did do ten years ago?

A. Pretty near it; yes, sir. We can refer to the books and tell just what we did do.

X Q. 339. Have you done any work for Meinhard since you have been engaged in business?

A. No, sir.

X Q. 340. When did you engage in business for yourself?

A. In the spring of 1880.

X Q. 341. And your books would show whatever you have done?

A. Yes, sir.

X Q. 342. What part of the cellar was this lower ice box in?

A. Well, it is in about the center of the old part, as near as you can get at it.

X Q. 343. It was about the center of the old cellar?

A. Yes, sir.
X Q. 344. It wasn't off one side or in the corner?
A. No, sir; it was nearer to the river than to the front.
X Q. 345. But, to your best recollection, about midway?
A. Yes, sir; it may be further north than south of the old building.
722 X Q. 346. Was there any other apartments near by it?
A. Yes, sir.
X Q. 347. What?
A. There was another cellar in the south part of the building, and that is about all I recollect.
X Q. 348. You don't remember, then, a wine cellar that adjoined this ice box?
A. No, sir.
X Q. 349. And you are quite positive there was no wine cellar adjoining this ice box?
A. No, sir; I don't know whether there was or not.
X Q. 350. You don't remember that?
A. No, sir; I had no business to examine the cellar.
X Q. 351. Is it your recollection that these beer-supply pipes ran through the wine cellar?
A. No, sir.
X Q. 352. They did not?
A. I don't think they did.
X Q. 353. Were they out so that you could see them as you went into the cellar?
A. They were boxed up, I think.
X Q. 354. How boxed up?
A. Boxed and a regular square box made of it.
X Q. 355. There was a square wooden box?
A. Yes, sir.
X Q. 356. Through which these beer-supply pipes passed?
A. Yes, sir.
X Q. 357. And that was the reason why you couldn't see these pipes as they passed from the lower ice box to the upper ice box?
A. No, sir; I tore a part of it off and saw that.
X Q. 358. You tore part of the wooden pipe off, did you?
A. Yes, sir.
X Q. 359. And the beer-supply pipes as they came out of the lower ice box went into this wooden pipe up to the upper ice box?
A. Went through this metal pipe, and the metal pipe was insulated with this box.
X Q. 360. This wooden box?
A. Yes, sir.
723 X Q. 361. How large was this wooden box?
A. I don't know.
X Q. 362. Square box, was it?
A. Yes, sir.
X Q. 363. A foot in diameter?
A. No, sir.
X Q. 364. Six inches in diameter?

A. Each had a separate box, to the best of my recollection.

X Q. 365. Each pipe had a separate wooden box?

A. Yes, sir.

X Q. 366. And how many of these wooden boxes were there?

A. There was either three or four of them.

X Q. 367. And you tore off part of this wooden box to see the pipe as they passed out of the lower ice box?

A. Yes, sir; to see the covering pipe.

X Q. 368. What did you want to see the covering pipe for?

A. I had to take it apart.

X Q. 369. And that is the way you know it was a metal covering pipe?

A. Yes, sir; that is why I think it was. That is my best recollection.

X Q. 370. Did you solder up this metal pipe after you tore it apart?

A. No, sir.

X Q. 371. You didn't take that trouble?

A. No, sir.

X Q. 372. Did you take the trouble to fix up the wooden pipe?

A. Yes, sir.

X Q. 373. Just simply closed that up without closing up the metal pipe?

A. I closed the metal pipe up.

X Q. 374. Didn't you say not five minutes ago that you did not close the metal pipe?

A. No, sir; you asked if I soldered it and I told you no, sir.

X Q. 375. You closed it?

A. Yes, sir.

X Q. 376. How did you fix it?

A. With a slip joint.

X Q. 377. Had you cut it off or cut it down lengthwise?

A. No, sir; it was put together with a slip joint.

724 X Q. 378. How much larger was this metal pipe that was put together with a slip joint than the beer-supply pipe which passed through it?

A. The area?

X Q. 379. Yes.

A. The area was about six or eight times larger and the diameter was about three times.

X Q. 380. And how much larger was the wooden box?

A. Oh, it was about four inches.

X Q. 381. Than the outside metal pipe that was joined together with a slip joint?

A. Yes, sir; and maybe it would be five inches.

X Q. 382. Did this wooden box contain anything besides the beer-supply pipe and the outer metal pipe joined together with a slip joint?

A. No, sir.

X Q. 383. It took you, I understand, about three-quarters of a day to make these repairs at Meinhard's?

A. Yes, sir.

X Q. 384. And that, I understand you, was the first and last time you ever repaired this Meinhard apparatus?

A. Yes, sir.

X Q. 385. Is there no way, Mr. Barr, that you can fix the exact time when you did this?

A. Not by myself; no, sir.

X Q. 386. How else or by whose assistance could you fix the day?

A. I might go to Mutschler's and look up their old books if they have got them.

X Q. 387. Mutschler's old books would show when you did the work there, would they?

A. Yes, sir; when the charge was made.

X Q. 388. Would the old books show the character of the work which you did?

A. Yes, sir; I suppose it would. When we do a job it tells what we work on. That is the way we keep our books.

X Q. 389. And that is your recollection of the way Mutschler kept his books?

A. Yes, sir.

X Q. 390. You judged, didn't you, that the water passed from the upper to the lower ice box because the pipes were slimy?

A. Yes, sir.

X Q. 391. Were they in a general slimy and filthy condition?

A. In a slimy condition, but not filthy.

725 X Q. 392. I believe you stated that the pipes were in rather a bad condition in the upper ice box.

A. No, sir; I did not.

X Q. 393. Were they clean and nice?

A. Well, I don't know w-ether clean and nice. They were wet.

X Q. 394. Was the ice all around those coils that were in the bottom of the box?

A. Yes, sir; before we took it out.

X Q. 395. Fine ice, was it?

A. Yes, sir.

X Q. 396. The second pipe that you repaired you didn't have to draw up, as I understand your testimony?

A. No, sir.

X Q. 397. So you didn't open the box through which that pipe went?

A. No, sir.

X Q. 398. How were the beer-supply pipes connected to the kegs? There was a faucet, wasn't there?

A. Yes, sir.

X Q. 399. The saucets entering the kegs?

A. They were connected with that with rubber.

X Q. 400. Ordinary rubber hose?

A. Yes, sir.

X Q. 401. How long was the connection with the rubber hose?

A. I couldn't say exactly how long.

X Q. 402. Two or three feet?
A. Yes, sir; about that.
X Q. 403. About three feet?
A. Yes, sir; two or three feet.
X Q. 404. And there was one piece of rubber hose about three feet connecting each beer-supply pipe to its respective faucet in the keg?
A. Yes, sir.
X Q. 495. And it is your recollection that there were four of these?
A. Yes, sir; three or four. I couldn't swear positive.
X Q. 406. What size rubber hose was this?
A. Half-inch rubber hose.
X Q. 407. Half inch diameter?
A. Yes, sir; inside diameter.
X Q. 408. Did you measure it?
A. No, sir.
726 X Q. 409. But you remember quite clearly that it was half-inch hose?
A. Yes, sir.
X Q. 410. And how was it coupled or joined to the beer-supply pipes?
A. It was wired on.
X Q. 411. Slipped over and wired on?
A. Yes, sir.
X Q. 412. Slipped over tightly.
A. Slipped over the beer pipe kind o' loosely.
X Q. 413. What was the size of the beer-supply pipes?
A. I couldn't say whether it was three-eighths or quarter pipe.
X Q. 414. If it was three eighths, that would be the inside diameter?
A. Yes, sir.
X Q. 415. What was the thickness of that three-eighths pipe?
A. It would be about one-sixteenth of an inch thick.
X Q. 416. So if it was a three-eighths-inch pipe the outside diameter would be about a half inch or a little less?
A. Yes, sir.
X Q. 417. As a plumber, when you speak of the size of the pipe you always refer to the inside diameter, do you not?
A. Yes, sir—that is, lead and iron pipe.
X Q. 418. And you think this rubber pipe slipped very easily over the outside of the beer-supply pipe?
A. We got it on and wired it. It can't slip over very easy. You can't pull it on when it is wired on.
X Q. 419. Do you remember in your affidavit already referred to of your giving the size of the beer-supply pipe?
A. Yes, sir.
X Q. 420. Do you remember mentioning in your affidavit the number of beer-supply pipes that there were?
A. I said three or four.
X Q. 421. You remember that distinctly?

A. Yes, sir.

X Q. 422. What did you give the size of the beer-supply pipe?

A. A quarter or three-eighths.

X Q. 423. And that you remember?

A. Yes, sir.

X Q. 424. Have you read your affidavit recently?

A. No, sir.

X Q. 425. Read it within a week?

A. No, sir.

727 X Q. 426. Two weeks?

A. Yes, sir.

X Q. 427. Read it within the last two weeks?

A. Yes, sir.

X Q. 428. Mr. Sullivan, I suppose, furnished you with a copy?

A. Yes, sir.

X Q. 429. And you have also talked with Mr. Sullivan in reference to that affidavit and the subject of your examination?

A. No, sir; we didn't have any conversation about it.

X Q. 430. For what purpose did you read over affidavit within the last two weeks?

A. For no purpose of mine. I read it over because it was shown me. I didn't read the whole of it over.

X Q. 431. Do you know why it was shown to you?

A. No, sir.

X Q. 432. Weren't you told to read it over because you were going to be examined as a witness in this case?

A. No, sir; I don't believe I was.

X Q. 423. Do you swear you was not so informed?

A. No, sir; I don't swear so.

X Q. 434. Didn't you understand, Mr. Barr, that you were given this affidavit of yours to read over because you were to be called as a witness in this case?

A. Yes, sir.

X Q. 435. You have stated that you repaired these pipes in the lower ice box in 1877 or 1878; in which year do you think it was?

A. I couldn't say, I am sure.

X Q. 436. Is it your better recollection that it was in 1878?

A. No, sir.

X Q. 437. It is your better recollection that it was in 1877, is it?

A. No, sir.

X Q. 438. You are certain it was in the spring or fall, but you can't say which, if I understand you?

A. No, sir.

X Q. 439. Can't you discriminate between the years and state whether your better recollection is that it was in 1878 or 1877?

728 A. No, sir; I have nothing to recall it to my recollection when it was, what year.

X Q. 440. Why do you say it was in the spring or fall and not in the winter or summer?

A. Because I think it was cold and was thawing. It was wet, raining, or thawing.

X Q. 441. Wouldn't you find that condition of weather in the winter?

A. No, sir.

X Q. 442. Don't have any such weather as that in Rochester in the winter?

A. No, sir; have a January thaw, but that was a long time ago.

X Q. —. Is it your better recollection that it was in the spring or fall?

A. I couldn't say.

X Q. 444. Since it is impossible for you to say whether it was in 1877 or 1878, tell me how it is possible to say it wasn't in 1879 or 1880.

—. I couldn't say as to that. I know it wasn't in 1880.

X Q. 445. But you can't say it wasn't in 1897, can you?

A. No, sir.

X Q. 446. Then it might have been in either 1877, 1878, or 1879, and the spring or fall of either of those years?

A. It might have been that, but I don't think it, because I commenced work for Mutschler in 1876 and I quit him in 1880.

X Q. 447. Am I correct in understanding you that you fixed it as the spring or fall owing to the peculiar weather you had?

A. Yes, sir.

X Q. 448. And you are certain it wasn't in summer, because you wouldn't have such weather in summer; is that so?

A. Yes, sir.

X Q. 449. But you would have such weather in both the early spring and late fall?

A. Yes, sir; that is, I think, the time. It might have been that we were working there doing some other work when the cellar was wet. We put the pipes in for water pipes and it might have been then. The cellar was wet and the sewer backed up or something and the cellar was quite wet there. I don't know whether it
729 was the time I fixed the pipe or fixing the water pipes.

X Q. 450. How did you get into the cellar?

A. We went out of the bar-room and out to the entrance to the big hall and then down cellar.

X Q. 451. And as you reached the bottom of the stairs what first met your eyes?

A. The dampness and wet—the water.

X Q. 452. Had the lower ice box right before you?

A. Oh, no, sir; no, sir.

X Q. 453. What part of the cellar was this lower ice box relatively to the steps which you came down?

A. To the southeast corner of the steps; about in the center of the block.

X Q. 454. What direction did you turn at as you came down?

A. Turned to the south; turned to the right hand.

X Q. 455. And then did the ice box appear before you?

A. If you walked straight ahead and then turn to the right it would; yes, sir.

X Q. 456. And how did you get into the lower ice box?

A. By opening the door and walking in.

X Q. 457. Did the door open out or in?

A. Out.

X Q. 458. Into the cellar?

A. Yes, sir.

X Q. 459. There was no wine cellar or other compartment anywhere near this ice box?

A. Not that I recollect.

X Q. 460. You are certain, aren't you, that you didn't have to go into any other cellar to rip off this wooden box?

A. I am not certain; no, sir; but I am pretty sure I did not.

X Q. 461. It is your recollection that you didn't, isn't it?

A. Yes, sir.

X Q. 462. Mr. Barr, will you explain to me why it is that, when it is your best recollection that you did not do a certain thing, you will persist in saying that you don't remember?

A. I don't understand you.

X Q. 463. I have asked you repeatedly in reference to cer-
730 tain matters, and you would say you don't remember, when afterwards you would say it is your best recollection that it was so and so. Why do you say that you don't remember, when it is your best recollection or while it is your best recollection that it was so and so?

A. Because I don't recollect the exact facts. If I said "I don't recollect" instead of "I don't remember," would it suit you better?

X Q. 464. When you say "I don't recollect" or "I don't remember," do we understand that you have a very indistinct recollection of a matter?

A. Yes, sir.

X Q. 465. You referred to a gas jet that swung in and out, didn't you?

A. No, sir.

X Q. 466. Was there a gas jet in the lower ice box?

A. I don't recollect.

X Q. 467. Was there a gas jet outside of the ice box and in close proximity to where the pipes went upstairs?

A. No, sir.

X Q. 468. No gas jet around those pipes?

A. I don't think there was.

X Q. 469. Do you remember taking a candle with you when you went down the cellar or was it lighted with gas down there?

A. To the best of my recollection, I took a candle.

X Q. 470. No gas light down there?

A. There was gas in the cellar.

X Q. 471. But not in the neighborhood of the lower ice box?

A. No, sir; not that I remember. I couldn't get around where I was working and had to have a candle.

X Q. 472. And from that fact you infer there was no gas in the immediate neighborhood?

A. There might have been, but our forms cast a shadow over the work and had to have a candle.

X Q. 473. And you took the candle out with you when you ripped open the wooden box to get the pipe out, did you?

A. I don't recollect as we did. I think there was light enough to see outside of the box from the gas. There was gas jets in the cellar.

731 X Q. 474. But it is your recollection that there were no gas jets around where these pipes were?

A. Yes, sir.

X Q. 475. I think you stated, Mr. Barr, that it was about four feet from the bottom of the upper ice box to the floor of the saloon, didn't you?

A. Yes, sir; it might been less. That is my idea of it.

X Q. 476. Now, with your knowledge of this Meinhard apparatus, what length of pipe would it take to inclose the beer-supply pipe as it left the upper ice box until it entered the side of the lower ice box?

A. I should say in the neighborhood of ten or twelve feet.

X Q. 477. Did your partner, Creelman, work upon this Meinhard apparatus?

A. No, sir.

X Q. 478. He has never done any repairing to it, has he?

A. Not that I know of; no, sir.

X Q. 479. And he has been your partner since you have been in business?

A. Yes, sir.

X Q. 480. You are positive, are you, that Schroth helped you when you repaired the pipes for Meinhard?

A. No, sir.

X Q. 481. You did have a helper, did you?

A. Yes, sir.

X Q. 482. What did your helper do?

A. He carried the tools.

X Q. 483. Held the candle, I suppose?

A. Yes, sir.

X Q. 484. If it wasn't Schroth, who must it have been?

A. I couldn't say.

X Q. 485. You made no repairs in the upper ice box, did you?

A. No, sir.

X Q. 486. You only looked in there and had to do with the upper ice box in drawing out the pipes and putting it back in place?

A. Yes, sir.

X Q. 487. Suppose, Mr. Barr, that the waste pipes extended from four to six inches up through the bottom and into the upper ice box, how would you get the water out?

A. You might have a separate waste pipe with a cock on it and draw it out.

732 X Q. 488. But it couldn't go down through those waste pipes until there was sufficient water in the bottom of the box to overflow, could it?

A. No, sir.

X Q. 489. Wouldn't it have been a desirable thing and wouldn't it have greatly aided in keeping the beer in the beer-supply pipes cool if the bottom of the upper ice box was kept full of water and ice for three or four inches?

A. Yes, sir; it would keep it cool, but wouldn't keep it as cool as clear ice, though.

X Q. 490. Do you know what would be the difference in the temperature between ice and half ice and water?

A. No, sir.

X Q. 491. Do you know whether there would be any difference in temperature, so to speak?

A. Well, I think there is; yes, sir.

X Q. 492. How many degrees?

A. I couldn't say exactly.

X Q. 493. You don't recollect, however, of seeing any such thing as four or five inches of water standing in the bottom of the ice box?

A. No, sir.

X Q. 494. Did you see an extra waste pipe having a cock to it?

A. No, sir.

X Q. 495. Don't remember seeing an extra waste pipe running from the upper ice box with a cock on so as to let the water off?

A. No, sir.

X Q. 496. Referring again to the affidavit which you made in the cases of Magin against McKay and Welker, if, as a matter of fact, there is a conflict between the statements contained in that affidavit and your present testimony, which is true?

A. I don't know.

X Q. 497. You endeavored to state in that affidavit, didn't you, all that you remembered about this Meinhard apparatus at that time?

A. Yes, sir; I think I did.

X Q. 498. And didn't you endeavor to then tell the truth according to your best recollection?

A. Yes, sir.

733 X Q. 499. And would you not say the statements of your affidavit having been made two or three years ago that your recollection then was better and more distinct than it is now?

A. I don't know; it has been called to mind pretty well this afternoon.

X Q. 500. Which are we to accept as correct, the statements contained in your affidavit or the statements made on your present examination?

A. Accept them both; they are both true, according to my best recollection.

X Q. 501. Suppose, however, that there is a serious conflict between the statements of your affidavits and the statements made during your examination, which are we to accept as true?

A. If you tell me what they are I will tell you which ones.

X Q. 502. On our present examination you have stated that you

repaired two pipes in Meinhard's lower ice box in 1877 or 1878 and in the spring or fall of the year——

A. Well, I wasn't certain.

X Q. 503. In your affidavit you stated, "In the summer or fall of 1877 I done some work for Gilbert & Meinhard on the beer-cooling apparatus they were *were* putting in their saloon in Falls Field, North St. Paul street, in the city." Now, which of those two statements is correct?

A. Well, I couldn't tell you until I get somebody to look up Mutschler's books which is right or which is wrong.

X Q. 504. During your present examination you have stated that you repaired Meinhard's apparatus. In your affidavit you say that you worked for Gilbert & Meinhard on the beer-cooling apparatus which they were putting in.

A. I guess that is changed there.

X Q. 505. Which statement is correct?

A. I guess that was changed there. That was changed. You have got the wrong one.

X Q. 506. Did you make two affidavits?

A. No, sir.

X Q. 507. What, then, do you mean by saying I have the wrong affidavit, that that was changed?

734 A. I said that was changed. I didn't say it was the wrong one, did I? Mr. Sullivan brought one up similar like that to me and I have had them cross them off and then I swore to it that I made the repairs on it, if I can recollect it right.

X Q. 508. Then you made corrections to the affidavit which Mr Sullivan brought up to you to sign and swear to, did you?

A. Yes, sir.

X Q. 509. And you signed and swore to it as corrected?

A. Yes, sir.

X Q. 510. Now, can you mention in what respects you changed that affidavit?

A. Yes, sir; just in that one clause there. That is one part of it, and then there might have been something else. There was one or two things.

X Q. 511. Do you remember what that something else might have been?

A. No, sir.

X Q. 512. Is it not the fact that you had nothing whatever to do with the putting in of this Meinhard apparatus?

A. Yes, sir.

X Q. 513. And if you are made in your affidavit to say that you worked on the putting in of that apparatus it is wrong?

A. Yes, sir.

X Q. 514. Because you did nothing of the kind?

A. Yes, sir; and that is right.

Complainant's counsel states that the original affidavit being filed he has been referring during the course of his examination to the copy of the witness' affidavit as the same was handed him by Mr.

Sullivan, defendants' counsel, and as it is contained in the package of papers marked "United States circuit court, northern district of New York. Magin against McKay and Welker. Copy affidavits used to oppose motion at New York December 29, 1885. J. Sullivan, defendants' solicitor, Elwood building, Rochester, N. Y," and which was handed to examining counsel with the statement
735 that it was Mr. Sullivan's copy, and if it is not a true copy of the witness' affidavit calls upon defendant to furuish a true copy.

Defendants' counsel states that the paper referred to by complainant's counsel as Mr. Barr's affidavit does not contain the words which the counsel has asked the witness, but, on the contrary, the same are erased and corrected by lead-pencil writing, and with such corrections it corresponds exactly with the original affidavits on file and with the copy served upon complainant's counsel, and that plaintiff's counsel has intentionally misrepresented the contents of the affidavit from which he has been asking the questions.

For the satisfaction of the court and to show that Mr. Sullivan has deliberately lied with the affidavit before him, complainant's counsel quoted the following from the affidavit, and asked the notary to quote from the affidavit the following, which he now marked in brackets that the court may see, being his intention to offer the same in evidence, that it is the same as he has stated.

The notary reads from affidavit: "I done some work for Gilbert & Meinhard on the beer-cooling apparatus they were putting in their saloon in Falls Field, North St. Paul street, in this city."

Complainant's counsel offers in evidence the identical copy referred to and asked the notary to mark the same "Complainant's Exhibit Barr Affidavit" and with his initials.

Defendants' counsel calls the notary's attention to the fact that the words "putting in" and "put in" are erased with lead pencil, and the words "repairing" and "repaired" substituted in their places,
736 which corrections were in the affidavit at the time that the complainant's counsel was cross-examining the witness, and that the reason why the copy which Mr. Seldon, the complainant's counsel, has not the word "repairing" and "repaired" written with a typewriter is that those were corrections made by Mr. Barr when the affidavit was presented to him to sign.

Complainant's counsel again calls the attention of the court to the deliberate intention of defendants' counsel to mislead and perpetrate a fraud upon the court in the belief that it will accept the statements without referring to the document in question, as the fact is that when he speaks of corrections he is speaking of an entirely different clause of the affidavit; that in the clause which the notary has quoted there is no correction and it is in typewriting in the following words, without any interlineation, erasure, or correction of any kind whatsoever, as follows: "I done some work for Gilbert & Meinhard on the beer-cooling apparatus which they were putting in their saloon in Falls Field, N. St. Paul street, in this city."

Defendants' counsel, in view of the evident intention of the complainant's counsel to mislead the court as to the contents of this

affidavit, desires to call the court's attention to the following sentence which immediately follows the one from which he has read *from:* "The work I done consisted in repairing three-eight-s inch lead pipes connecting the beer kegs in the ice box in the cellar with the faucets in the ice box in the saloon, through which pipes the beer was drawn for consumption. I repaired three of these lead pipes, the length of each being about ten feet."

X Q. 515. Mr. Barr, is that a copy of your affidavit?

737 A. I couldn't tell without my signature. I couldn't say unless I saw my signature on it.

X Q. 516. As you made this affidavit within the past few years, can't you, by reading it over, say whether that is or is not substantially a correct copy of your affidavit?

A. It is with those corrections.

X Q. 517. That is, with the lead-pencil corrections that appear in the affidavit?

A. Yes, sir; the ones that I made.

The copy which the witness identifies is the copy already offered in evidence and marked Complainant's Exhibit Barr, Jr.'s, Affidavit and with notary's initials.

X Q. 518. When did you commence working for Mutschler?

A. In 1876.

X Q. 519. What time of the year was it?

A. About the first of April.

X Q. 520. Why did you say in this affidavit that it was in the summer or fall of 1877 that you made these repairs at Meinhard's, whereas you now say it was in the spring or fall of either 1877 or 1878?

Defendants' counsel objected to the question.

A. Because that was written down. Mr. Sullivan asked me that question when he examined me first and I told him it must have been either the summer or fall, before thinking much about it.

X Q. 521. After you had the talk with Mr. Sullivan did he go off and write the affidavit?

A. Yes, sir.

X Q. 522. You were not present when it was written?

A. No, sir.

X Q. 523. And he brought it to you to sign?

A. Yes, sir; and he read it to me and I read it over and then I crossed that out where it said "put it up." I only repaired it and didn't put it up.

738 X Q. 524. Then where the words "putting in" and "put in" occurred you crossed them out and substituted the word "repairing" and "repaired"?

A. Yes, sir.

X Q. 525. You have thought more about it since you made this affidavit, have you?

A. Yes, sir.

X Q. 526. Then would you regard the statements which you have made during your present examination as more reliable than those contained in your affidavit?

A. Yes, sir; as I said before I might have been working some other job there when the floors were wet and water in them.

X Q. 527. You might have gotten the time when, and the circumstances connected with, your repairing the pipes in the lower ice box mixed up with some other job which you done for Meinhard?

A. Yes, sir; in regard to the time. I know we did their work there from the time they moved in until they went out, with the exception of that ice box.

X Q. 528. You did their work right along?

A. Yes, sir.

X Q. 529. In your affidavit you say, "The work I done consisted in repairing ¾-inch lead pipe connecting the beer kegs and the ice box in the cellar with the faucets in the ice box in the saloon, through which pipes the beer was drawn for consumption."

A. Yes, sir.

X Q. 530. On your present examination you have stated that the beer-supply pipes were either a quarter or three-eighths?

A. Yes, sir.

X Q. 531. Now, which were they?

A. Well, I couldn't say.

X Q. 532. Why did you say, in your affidavit which you made under oath, that the pipes were three-eighths inch and now you say a quarter or three-eighths inch?

A. Because I have been thinking of it that they might have been a quarter. When I made that affidavit I didn't think; it was so small a matter that it didn't need a correction.

739 X Q. 533. Now, you think it is rather a large matter?

A. No, sir; I am cross-examined now and wasn't before.

X Q. 534. Now, if you were to think a while longer over this matter might not these beer-supply pipes stretch to an inch?

A. No, sir.

X Q. 535. Why not?

A. Because I never repaired an inch beer pipe and never knew of one put in.

X Q. 536. But you say they may have been a quarter of an inch, because you have thought more of it?

A. Yes, sir; I have put in a quarter pipe.

X Q. 537. You have put in quarter pipe for whom?

A. For several.

X Q. 538. Haven't you put in quarter pipe in these different beer-drawing apparatuses that you have put in?

A. Sometimes; yes, sir, and sometimes three-eighths.

X Q. 539. Isn't it barely possible that you have got this Meinhard apparatus confused with the beer-drawing apparatuses that you put in?

A. No, sir.

X Q. 540. Don't you think that is possible?

A. No, sir.

X Q. 541. How, then, do you account for the fact that now you say the beer-supply pipes were a quarter or three-eighths and in your affidavit you swore positively that they were three-eighths?

A. Because, as I said before, it might have been a quarter.

X Q. 542. On your present examination you have testified that you have repaired two of these lead pipes; in your affidavit you say, "I repaired three of these lead pipes;" now, which was it, two or three?

A. Well, I repaired two of them and might have done a little to the other one.

X Q. 543. You didn't remember that when you were first examined to-day, did you, that you repaired three of them?

A. I was never asked that.

740 X Q. 544. Do you mean to say I didn't ask you and Mr. Sullivan didn't ask you how many pipes you repaired?

A. Did you?

X Q. 545. Don't you remember it?

A. Yes, sir; I remember it.

X Q. 546. Now you think it was two pipes that you repaired?

A. Yes, sir.

X Q. 547. And not three?

A. Yes, sir.

X Q. 548. How do you account for that discrepancy between your present examination and this affidavit?

A. Because I have thought more of it or about it?

X Q. 549. And the more you think the more these things multiply, do they?

A. No, sir; that is decreasing, I think.

X Q. 550. Well, if you were to think long enough, do you think it would diminish to one pipe that you repaired?

A. No, sir; I don't think it would.

X Q. 551. Was this opening in the side of the lower ice box through which the beer-supply pipes went at one side or about the center of the box?

A. It was at one side.

X Q. 552. Nearer the wall or nearer the front of the box?

A. Nearer the river, on the river side.

X Q. 553. The river was west of the apparatus, wasn't it?

A. Yes, sir.

X Q. 554. As you didn't look in the closet underneath the upper ice box, do you know how far down the tin or metal pipes projected?

A. No, sir; not for positive.

X Q. 555. Do you know at all?

A. I can surmise it—that they went clear down.

X Q. 556. Clear down into the lower ice box?

A. Yes, sir.

X Q. 557. With that recollection of the matter explain this statement of your affidavit: "I repaired three of these lead pipes, the length of each being about ten feet. Each pipe was fastened to the

beer keg in the cellar by means of a rubber hose coupling
741 or attachment, and from this the lead pipe ran a little slanting and up through an upper corner in the lower ice box, entered the bottom of the upper ice box through tin pipes about twelve inches long and an inch in diameter, which tin pipes were tightly soldered into the bottom of the upper ice box and projected three or four inches above and about eight inches below the bottom of the ice box;" and I call your attention especially to the language "entered the bottom of the upper ice box through tin pipe- about twelve inches long and an inch in diameter, which tin pipes were tightly soldered into the bottom of the upper ice box and projected three or four inches above and about eight inches below the bottom of the ice box."

Question objected to upon the ground that it is indefinite and uncertain and does not call for an answer.

A. It might have been that way; and, to the best of my recollection, it was the other way, come to think about it.

X Q. 558. Then in that respect again your recollection has changed since giving your affidavit?

A. Yes, sir.

Redirect examination by Mr. SULLIVAN:

R. D. Q. 559. In your cross-examination you have stated that you took this soda-water pipe out about two weeks after you put it in; what was the reason of taking it out in so short a time?

A. They didn't sell enough of it. It was put on there for trial.

Recross-examination by Mr. BENNETT:

R. X Q. 560. In addition to repairing the pipes in the
742 lower ice box at Meinhard's and doing such other jobs as Meinhard had from time to time, I suppose you were in the habit of going into his saloon, were you?

A. Yes, sir; once in awhile.

R. X Q. 561. Who was his barkeeper at the time you repaired the pipes in the lower cellar?

A. He tended bar, he and Gilbert, the most of the time, and a man named Feight, the fellow that was killed; Bradley killed him.

R. X Q. 562. Meinhard and Gilbert personally did the most of the bartending there, didn't they?

A. Yes, sir.

R. X Q. 563. Can you name any parties who tended bar at Meinhard's since you have known his place?

A. No, sir; not by name.

R. X Q. 564. Do you know when this Meinhard apparatus was taken out?

A. No, sir.

R. X Q. 565. Did you ever go into Meinhard's saloon on a Sunday?

A. Yes, sir.

R. X Q. 566. Have you seen him drawing beer out of this apparatus at different times when you were in there on Sunday?

A. Yes, sir; I think I have.

WILLIAM BARR, JR.

STATE OF NEW YORK, }
County of Monroe, } *ss:*

On this 6th day of February, 1888, before me personally appeared the above-named William Barr, Jr., and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

GEORGE F. SLOCUM,
Notary Public.

743 ADOLPH CASSEBEER, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by JOSIAH SULLIVAN, the defendants' counsel, *testified* as follows:

Question 1. What is your name, age, residence, and present occupation?

Answer. My name is Adolphus Cassebeer, age is 38, and my residence 492 North Clinton street, and business, gas-fitter.

Q. 2. How long have you been engaged in your present occupation?

A. Since 1866, since I have been at the trade.

Q. 3. Doing business for yourself during that time?

A. Yes, sir; since 1875.

Q. 4. Did you know the firm of Gilbert & Meinhard when they kept a saloon in Falls Field, in this city?

A. Yes, sir.

Q. 5. Did you at any time do work for them in repairing a beer-cooling apparatus they had in their saloon?

A. Yes, sir.

Q. 6. When was that?

A. It must have been, I guess, 1876, or somewhere around there or 1877.

Q. 7. What kind of work did you do for them?

A. Took out a few coils in the top of the box and straightened the pipes, soldered them and straightened them, and repaired the top faucets.

Q. 8. You took the coils out of which box?

A. Out of the top, the inside here (referring to model).

Q. 9. The upper ice box?

A. Yes, sir.

Q. 10. Did any person assist you in doing that work?

A. No, sir; I done it myself.

Q. 11. While doing that work did you examine the inside of the upper ice box?

A. Just that part where I worked on.

Q. 12. What was inside of the upper ice box?

A. There was some coils of pipe—tin-lined pipe, I think they were; tin pipe or tin lined.

744 Q. 13. Was there any ice in the upper ice box?

A. Yes, sir.

Q. 14. There was some ice in the ice box?

A. I don't know how it came there.

Q. 15. After the ice melted in the upper ice box, what became of the ice water?

A. Well, the ice water staid in the top. There was only three tubes there, and these pipes went through.

Q. 16. What was the size of those tubes?

A. I suppose they was about three-eighths of an inch outside, and the tube- must have three-quarters of an inch or somewhere along there—big enough to allow them to slip through.

Q. 17. What were those tubes made of?

A. Made out of tin or zinc.

Q. 18. What was the length of those tubes?

A. They were just short tubes to go from the top ice box through, and then there was a rubber hose on them. I don't — the length and didn't measure the length.

Q. 19. Was there rubber hose fastened to the tin tubes?

A. Yes, sir.

Q. 20. And where did the rubber hose go to?

A. I couldn't tell; I didn't examine that.

Q. 21. You didn't examine the lower ice box, then?

A. No, sir.

Q. 22. Were you not in the cellar on that occasion?

A. No, sir.

Q. 23. How could this water get out of the upper ice box?

A. It would run through these tubes, and they would wipe it out with a cloth.

Q. 24. And after running through the tubes, where would it run to?

A. Run down below. I didn't notice where it run to. It would run down, I suppose, into the lower ice box, if the tubes that were attached to it did.

Q. 25. How many of these tubes were there? Do you know?

A. There was three—that is, there were three that I repaired.

745 Q. 26. What was inside of those tin tubes?

A. The tin-lined pipe.

Q. 27. Is that the pipe through which the beer ran?

A. Yes, sir.

Q. 28. Was there any other way for the water to get out of the upper ice box except through those tin tubes?

A. No other way.

Q. 29. From the appearance of the construction of that apparatus where would you say the water ran to when it left the upper ice box?

Objected to as calling for an expression of opinion in the face of the witness's statement that as a fact he did not know.

A. It would run through the rubber tubes if they were attached to the tin pipes that run through there; if it wouldn't, it would run on the floor.

Q. 30. Did you notice if there was any water in the lower part of the upper ice box?

A. No, sir.

Q. 31. You didn't see any water?

A. No, sir; I didn't notice any water.

Q. 32. Was the floor quite dry?

A. I didn't examine that so close. He had it washed out when I came there. He had it cleaned out.

Q. 33. What was the size of those rubber hose?

A. I should think it would be about three-eighths, the regular size what they use.

Q. 34. How much of the rubber hose did you see?

A. Just the part from the floor up to the top of the ice box.

Q. 35. You didn't see that part of the rubber hose, then, in the cellar?

A. No, sir; I didn't go in the cellar at all.

Q. 36. Was there anything in the lower part of the upper ice box to interfere with your seeing the pipes?

A. No, sir; there was nothing there.

746 Q. 37. Is that the only time you ever repaired this apparatus?

A. Yes, sir; that is the only time.

Q. 38. About what was the size of this upper ice box?

A. I didn't measure the size.

Q. 39. Was the upper ice box lined?

A. Yes, sir.

Q. 40. With what?

A. With zinc.

Cross-examination by Mr. BENNETT, counsel for the complainant:

X Q. 41. Are you engaged in business for yourself?

A. Yes, sir.

X Q. 42. How long have you been engaged in business for yourself?

A. Since 1875.

X Q. 43. And this is the only work you ever did for Meinhard?

A. Yes, sir.

X Q. 44. I suppose you keep a set of books?

A. Yes, sir.

X Q. 45. Make entries in those books of the various jobs you do?

A. Yes, sir.

X Q. 46. Your books will show when you did this work for Meinhard, won't they?

A. Yes, sir.

X Q. 47. Have you examined those books to see when it was?

A. Not recently; some time ago.

X Q. 48. You did examine those books at the time you made an affidavit in the case of Magin *vs.* Welker and McKay, didn't you?

A. Some time ago; I couldn't remember when I examined them; some years ago.

X Q. 49. You remember making an affidavit, don't you?

A. Yes, sir.

X Q. 50. Didn't you examine your books at that time?

A. Yes, sir.

X Q. 51. You have those books yet, haven't you?

A. I think I have.

X Q. 52. Will you permit me to go with you from here to your place of business and you turn to the entry for this work of Meinhard?

747 A. I couldn't do that just now, because I have some business out west of the city.

X Q. 53. Will you send a note to whoever is in charge of your business instructing them to deliver those books to a messenger?

A. They couldn't find them unless I looked them over myself. They don't know anything about my books.

X Q. 54. How far is your place of business from here?

A. On Clinton street. If you want to find out, of course I could tell you this evening.

X Q. 55. It is important that we know at once and I will order a carriage if you will get into it with me and go and get that book. Will you do so?

A. Of course I have my wagon out in the street here and a lot of tools and everything else on them, and I would have to deliver that stuff first before I go back, because I have a lot of men working and waiting for me on the street, and if I don't I am liable to get into trouble.

X Q. 56. Who is attending to your wagon while you are testifying here?

A. Nobody.

X Q. 57. It would probably only take you ten or fifteen minutes to go from here and get that book and your cross-examination will probably take an hour or two, and won't you oblige us by going and getting it?

A. I will have to drive back again, then; that is all. Of course my time is very limited and my time is worth money to me.

X Q. 58. You were not subpœnaed to come here?

A. No, sir.

X Q. 59. Why did you come here?

A. I came here at the request of Mr. Sullivan.

X Q. 60. Anybody else request you to come here?

A. No, sir.

X Q. 61. If your time was so valuable that you cannot spare enough to go and get that book for us to absolutely fix a certain date, why did you come here when you were not subpœn-ed?

A. Well, I was requested to come here and Mr. Meinhard
748 thought probably I would have to come here and Mr. Sulli-

van, and I came here and they told me I would probably have to stay here about five minutes.

X Q. 62. Mr. Meinhard asked you to come here, did he?

A. Yes, sir; he told me probably I would have to come here.

X Q. 63. When did Mr. Meinhard tell you that?

A. Some weeks ago.

X Q. 64. Didn't you understand me to ask you a moment ago whether anybody else asked you to come here but Mr. Sullivan?

A. Yes, sir; I understood it.

X Q. 65. Why, then, didn't you tell me Mr. Meinhard spoke to you about coming here?

A. He didn't tell me to come. He said I may have to come.

X Q. 66. Why didn't you tell me that instead of leaving it to me to ask three or four more questions to bring out the fact?

A. Because I thought it didn't amount to anything. I didn't think it had any significance in this case.

X Q. 67. When did you last see Mr. Meinhard?

A. I see him most every day when I go by there. I go by his place most every day.

X Q. 68. Do you do work for him at the present time?

A. I do occasionally repair pipes for him.

X Q. 69. Where was it he had this talk with you within the last two or three weeks?

A. I walked on the street with him.

X Q. 70. Did he come to your shop for you?

A. No, sir.

X Q. 71. Did you go to his saloon for him?

A. No, sir.

X Q. 72. Where did he meet you?

A. On Clinton street.

X Q. 73. And what did he say to you?

A. He was talking about the beer machine and he says, "They got that thing up again and a lot of bother to people;" and he says, "You may have to go and testify about it;" and that was all he said about it.

749 X Q. 74. Is that the only talk you have ever had with Mr. Meinhard about this beer apparatus?

A. That is the only talk lately.

X Q. 75. How many talks did you have with him before that?

A. That is all I remember, except that *that* time when that affidavit was made out.

X Q. 76. Then you had a talk with him?

A. Yes, sir.

X Q. 77. Did he come for you?

A. Yes, sir; he spoke to me about it.

X Q. 78. He asked you to give that affidavit, did he?

A. Well, he told me to explain what I had done. Of course, I knew what I done.

X Q. 79. And you made that affidavit at his request?

A. No, sir; not at his request. I was asked to make the affidavit.

X Q. 80. By him?

A. That I don't remember, if it was him or——

X Q. 81. How long did he stay at your place when he came on the occasion when you made this affidavit?

A. I don't remember how long he stayed there.

X Q. 82. Had you ever talked with him before that time about this apparatus?

A. No, sir.

X Q. 83. You don't remember of talking with him before that?

A. No, sir.

X Q. 84. Now, just what did Mr. Meinhard say to you when he came to you to see about giving your affidavit?

A. He says I would remember what I done on the machine, and I told him I did, and that is all there is *there is* to it.

X Q. 85. Did you tell him what you remembered?

A. Yes, sir; I knew what I done. I took them coils out and straighted the pipe.

X Q. 86. And then he told you what he had done, did he?

A. No, sir; he didn't tell me what he had done. I don't know what he done, and I know what I done, and that is all I know—what work I done on it.

750 X Q. 87. And how long did this conversation between you in reference to this apparatus last?

A. I suppose about ten minutes—five to ten minutes.

X Q. 88. And, then, after that did you go and make your affidavit?

A. I don't remember that.

X Q. 89. You don't remember the circumstances about making your affidavit?

A. I know the affidavit was made at the time and that is all I remember about it.

X Q. 90. Where was the affidavit made?

A. I forget where it was made.

X Q. 91. Do you remember who took your acknowledgment to that affidavit?

A. Mr. Sullivan.

X Q. 92. You swore to it before Mr. Sullivan?

A. Yes, sir.

X Q. 93. At Mr. Sullivan's office?

A. No; I think it was at my house.

X Q. 94. Did Mr. Sullivan and Mr. Meinhard go to your house together?

A. No, sir; Mr. Meinhard never was in my house.

X Q. 95. At your place of business did Mr. Sullivan and Mr. Meinhard come together?

A. No, sir.

X Q. 96. Mr. Sullivan brought the affidavit to your house, did he?

A. No, sir; I made the affidavit at my house.

X Q. 97. At whose house?

A. At my own house?

X Q. 98. Anybody with Mr. Sullivan?

A. No, sir.

X Q. 99. Did you have any talk with Mr. Sullivan before he showed you the affidavit that you signed and swore to or had your talk been only with Mr. Meinhard?

A. My talk was only with Mr. Meinhard.

X Q. 100. Having stated at the time you made the affidavit you referred to your books to see when it was that you did this work at Meinhard's, why was it that you didn't put the exact date in your affidavit?

751 A. Because there was some other little work done at the same time—some other repairing done at the same time.

X Q. 102. Was that any reason why you shouldn't put the exact date in your affidavit, if you wanted to tell the truth to the court?

A. Because it was done at a certain time, took the faucets up and came back, and sometimes a week and sometimes a day, and there they'd have a lot of jobs come in and one time and another there, and that is how that goes.

X Q. 103. How, then, do you know, from the entries on your book, the date when you took these coils out?

A. I know from the time the faucets and things were repaired and the time I worked at it.

X Q. 104. Won't your books show so many hours' work on removing of coils?

A. Yes, sir; it would show.

X Q. 105. You could, when you made that affidavit, stated the exact time, couldn't you?

A. I suppose I could if I wanted to be so very particular about it.

X Q. 106. You didn't think it was necessary to be very particular; is that it?

A. No, sir; because I had my head full at the time. Mr. Meinhard moved away from Falls Field six or seven years ago and his wife died, and after that he moved away from there to Clinton street.

X Q. 107. How long before Mr. Meinhard moved away from Falls Field was it that you did this work?

A. It may have been a year or two before that.

X Q. 108. It was a year or two before Mr. Meinhard moved away from Falls Field?

A. In that neighborhood.

X Q. 109. You went to Mr. Meinhard's, as I understand your testimony, to take the coils out of the upper ice box?

A. Yes, sir.

X Q. 110. What were these coils?

A. They were tin-lined pipe.

X Q. 111. And how many coils of them to each beer-supply pipe?

A. There were three coils.

752 X Q. 112. Three wraps of the pipe?

A. Yes, sir; three coils coiled in the bottom of the apparatus box.

X Q. 113. So that there was a coil to each beer-supply pipe?

A. Yes, sir.

X Q. 114. And each coil consisted of three wraps of the pipe?

A. Yes, sir; there was three coils.

X Q. 115. And these coils were in the bottom of the ice box, were they?

A. Yes, sir; of the top ice box.

X Q. 116. And you took them out?

A. Yes, sir.

X Q. 117. What did you do when you took them out?

A. Straightened the pipes.

X Q. 118. Done away entirely with the coil in the upper ice box?

A. Yes, sir.

X Q. 119. Then the beer-supply pipe, I suppose, went directly to the faucet?

A. Yes, sir.

X Q. 120. Did you take the three coils out at this time?

A. Yes, sir; took all the coils out.

X Q. 121. And made the straight connections?

A. Yes, sir.

X Q. 122. You are quite certain that you took coils out, are you?

A. Yes, sir.

X Q. 123. What was the size of the pipe which you took out?

A. If is a quarter of an inch tin-lined pipe—that is, the general size they have.

X Q. 124. I don't care to know what the general size is that they have, but what actually was the size of the pipe that you took out?

A. A quarter of an inch.

X Q. 125. And it was a tin-lined pipe, was it?

A. Yes, sir; tin-lined pipe.

X Q. 126. What did you do with the three coils when you took them out?

A. Left them up there.

X Q. 127. Do you know who put in these coils?

A. No, sir.

X Q. 128. That was the first you had ever seen Meinhard's beer apparatus, was it?

A. Yes, sir.

X Q. 129. And the last time?

A. Yes, sir.

X Q. 130. And your examination of it was confined to the upper ice box?

A. Yes, sir.

753 X Q. 131. And especially to removing these coils and making the straight connections?

A. Yes, sir.

X Q. 132. How long were you doing this job?

A. I couldn't tell you that exactly—how long we were at it. It wasn't a great deal of a job.

X Q. 133. An hour?

A. Oh, probably two or three hours.

X Q. 134. And you did it all yourself?

A. Yes, sir.

X Q. 135. Had no helper?

A. No, sir.

X Q. 136. Just describe how you did the work and what was necessary to be done.

A. I cut the coils off and straightened the pipe and soldered the couplings on inside and took the faucets off and had them repaired and put back again.

X Q. 137. Then you didn't disturb the beer-supply pipes running to the cellar?

A. No, sir.

X Q. 138. Other than to cut them off?

A. That was all.

X Q. 139. And the pieces which you soldered on you soldered in the upper ice box?

A. Yes, sir.

X Q. 140. Without taking the beer-supply pipes?

A. I didn't take no pipes out.

X Q. 141. Soldered them just as they were in position?

A. Yes, sir.

X Q. 142. Did you look into the closet underneath the ice box?

A. Yes, sir; there was nothing in the closet, only the rubber pipes.

X Q. 143. You looked in, did you?

A. Yes, sir.

X Q. 144. What occasion had you to look in?

A. To see how the pipes were there or the tubes were.

X Q. 145. Your business didn't require you to look in, did it?

A. No, sir; it didn't require it. I don't know as it did. All I had to do was to fix the top pipes.

X Q. 146. You spoke of rubber pipe. You had nothing to do with those rubber pipe, did you?

A. No, sir.

754 X Q. 147. But the rubber pipe were there when you went there?

A. Yes, sir.

X Q. 148. You swear positively to that, do you?

A. Yes, sir; there was rubber pipe there.

X Q. 149. You couldn't tell where the rubber pipe went to?

A. No, sir.

X Q. 150. Nor anything about it?

A. No, sir.

X Q. 151. Nor for what purposes it was intended?

A. I didn't go down cellar, and only fixed the top box.

X Q. 152. How many rubber pipes were there?

A. There was one for each coil.

X Q. 153. This rubber pipe, then, went into the upper ice box around the coil, did it?

A. No, sir; around those tubes that went through the top ice box.

X Q. 154. What tube?

A. The zinc or tin tubes that run through the top.

X Q. 155. Waste-pipe tubes?

A. Yes, sir; where the tin-lined pipe went through and took the water and took it away.

X Q. 156. Do you remember seeing the drip water from the upper ice box go into the pails in the closet?

A. There wasn't much water there; he had the most of it out.

X Q. 157. The water was out and the ice was out?

A. Yes, sir; he took the ice out or had the most of it out when I came there.

X Q. 158. So you couldn't see what did become of the water?

A. No, sir; I couldn't.

X Q. 159. And that was no part of your business there, was it?

A. No, sir.

X Q. 160. And how many waste pipes were there?

A. There was three pipes through the top of the ice box.

X Q. 161. You don't know what they were there for, except as you saw them there?

A. No, sir; that was all.

X Q. 162. Of what material were they made?

A. Of tin or zinc.

755 X Q. 163. Was it tin or zinc?

A. I think it was zinc.

X Q. 164. Soldered to the bottom of the upper ice box?

A. Yes, sir; soldered around.

X Q. 165. Were the ends level with the bottom of the box or projected up into the box?

A. Projected up a little.

X Q. 166. How far?

A. About half an inch or an inch, or somewhere around there.

X Q. 167. And all the water and ice was out when you got there?

A. Yes, sir.

X Q. 168. And there was none in when you were there?

A. Yes, sir; he had it cleaned out.

X Q. 169. Did you notice whether these zinc pipes extended below the bottom of the ice box?

A. Do you mean the upper ice box?

X Q. 170. Yes.

A. No, sir; I didn't notice that.

X Q. 171. You don't know whether they extended below the bottom or not?

A. I suppose they did a little, because the rubber tubes had to fit in it.

X Q. 172. You didn't take the rubber tube off?

A. No, sir.

X Q. 173. You don't know how it was connected?

A. It slipped over.

X Q. 174. How do you know?

A. I looked at it from the outside.

X Q. 175. What was the size of the tin pipe?

A. I suppose they were somewhere around big enough to catch that quarter of an inch pipe. I didn't measure the size.

X Q. 176. Just large enough to let the quarter of an inch beer-supply pipe go through?

A. Yes, sir; and leave plenty of room to go through.

X Q. 177. Would you say it was a three-eighths pipe?

A. I should think it was or a little larger; there was room enough and there was a little play room besides.

X Q. 178. How much play room?

A. I didn't measure that.

756 X Q. 179. You didn't measure any of the pipe, did you?

A. No, sir.

X Q. 180. Would you say it was a half inch diameter, the tin pipe?

A. Probably it was.

X Q. 181. Was it more than that?

A. It might be a little more or less, and I couldn't tell you.

X Q. 182. You didn't take the rubber hose off?

A. No, sir.

X Q. 183. Don't know anything about the rubber hose?

A. No, sir.

X Q. 184. Except that you saw them there?

A. I saw them there.

X Q. 185. What was the appearance of the apparatus; did it show much use?

A. Yes, sir.

X Q. 186. Had it been long in use when you made these repairs?

A. Yes, sir.

X Q. 187. Should you say three or four years?

A. Yes, sir.

X Q. 188. Did the pipe seem to be pretty generally worn?

A. Yes, sir.

X Q. 189. And showed signs of great use?

A. Yes, sir.

X Q. 190. Why on your direct examination did you say that the rubber hose was about three-eighths of an inch?

A. Well, because I suppose they are about that size as a general rule.

X Q. 191. You mean that is the ordinary size of rubber tubing?

A. Yes, sir.

X Q. 192. And therefore you think this must have been three-eighths of an inch?

A. Yes, sir; I didn't measure it and only guessing at it.

X Q. 193. Do you think guess-work is pretty reliable testimony under oath?

A. Not very; no. It may have been larger for all I know.

X Q. 194. It may have been smaller than three-eighths?

A. No, sir; it wasn't less.

X Q. 195. How do you know it wasn't?

A. Because if they had been less they wouldn't have slipped over those tubes.

757 X Q. 196. Didn't you tell me you didn't measure those tubes?

A. Yes, sir; I didn't measure them. I went to change those pipes on top and change the faucets.

X Q. 197. And that is about all you know about this apparatus, isn't it?

A. That is about all I know about it.

X Q. 198. Let me refresh your recollection a little by asking you whether you took coils of pipe out of the upper beer box.

A. Yes, sir; I did.

X Q. 199. And you never worked for Meinhard only on that one occasion?

A. I have worked around there and repaired pipes besides that—water pipes.

X Q. 200. Have you ever worked on that apparatus before or since?

A. No, sir.

X Q. 201. Didn't you take small coolers out of that upper ice box?

A. I don't know what you mean by coolers.

X Q. 202. Didn't you take coolers out of that upper ice box?

A. I don't know what you mean by coolers.

X Q. 203. Do you know what a cooler is?

A. I didn't take nothing out only those coils and soldered that.

X Q. 204. Do you, as a plumber, know what a cooler is?

A. A place where ice is kept in.

X Q. 205. If you used the word "cooler," what would you mean by it?

A. Cooler is a place where you keep your ice.

X Q. 206. That is a cooler?

A. Yes, sir; where you keep ice in it. Anything that you keep ice in you have ice coolers and have coolers on these big meat boxes.

X Q. 207. That is what you mean by the word "cooler"?

A. I have seen lots of big meat-coolers in New York city.

X Q. 208. Confine yourself to what you did at Meinhard's
758 and what I am asking you about. If you used the word "cooler" in connection with the Meinhard apparatus what did you mean?

A. He had those coils in there to keep the beer cold, and those coils were taken out, and said he couldn't keep the beer cold enough, so he took them out.

X Q. 209. Don't you know there is a difference between a coil of pipe and a cooler?

A. Of course there is a difference.

X Q. 210. What is the difference?

A. The cooler is the thing where you keep the ice and put in bottles or meat or anything to keep it cool.

X Q. 211. And a coil of pipe is a very different thing from that?

A. A coil of pipe is a coil of pipe, and that is not a cooler. It depends on how you run the pipe. If you run it through the ice, then it is a cooler that cools that water pipe.

X Q. 212. Didn't you see in the bottom of Meinhard's upper ice box three cylinders, into one end of which the beer-supply pipe was fastened and from the other end of which a small pipe went to the beer fauset?

A. There were three little tubes where these pipes went through, and that was all there was there.

X Q. 213. Where were those little tubes?

A. Through the bottom of the top ice box, and three tubes, and the tin-lined pipe went through those tubes.

X Q. 214. Don't get off the subject again, but answer my question, whether you didn't find in the bottom of Meinhard's upper ice box three small cylinders, to the one end of which was attached the beer-supply pipe from the cellar, from the opposite end of which the pipe went to the faucet from which the beer was drawn.

A. There were three tubes went there, and there was three pipes went through those three tubes, and that is all I know about it, and those coils were taken off.

759 X Q. 215. You wouldn't call these three pipes through which the beer-supply pipes passed coolers, would you?

A. No, sir; not them tubes where the pipes go through.

X Q. 216. Have you never seen in the bottom of the saloon ice boxes small cylinders around which was packed ice and through which the beer passed into and through the cylinder and out through another pipe to the faucet?

A. The most of them I seen had a large cylinder and then the other pipes went through.

X Q. 217. But you have seen small cylinders, through which the beer passes?

A. Yes, sir; I have seen them, Meinhard's.

X Q. 218. Where do you find any cylinder in this Meinhard, you having pointed to this model?

A. Where the three pipes go through.

X Q. 219. You call those cylinders, do you?

A. Yes, sir.

X Q. 220. Through which the beer passes?

A. The beer passes through the cylinders and through the coil of pipe and into the cylinders.

X Q. 221. Have you ever seen, in the bottom of the saloon ice box, small cylinders around which ice was packed and into which the beer passed from the supply pipe from the cellar?

A. Not small cylinders; I have seen one large cylinder, as a general thing.

X Q. 222. Where did you see that?

A. At most all the saloons.

X Q. 223. Did the beer go into this cylinder?

A. The pipes passed through.

X Q. 224. Didn't you understand that I was asking about a cylinder into which the beer was actually delivered?

A. These large cylinders, they act as funnels, as conductors, to let these pipes through, so as to prevent them from the cold or the cold or hot air to get onto them.

760 X Q. 225. Did you never see in the bottom of the saloon ice box a cylinder which was substantially an enlargement of the beer-supply pipe?

A. Yes, sir; I did.

X Q. 229. Where did you see that?

A. Most all saloons has got them.

X Q. 227. And the beer passes through that enlargement, does it?

A. Yes, sir; it passes through—through smaller pipes inside of the big one.

X Q. 228. Have you put in any beer-coolin, apparatuses yourself?

A. No, sir.

X Q. 229. Never one?

A. No, sir; I didn't care for that kind of trade.

X Q. 230. Do you know of the Gordon beer apparatus?

A. No, sir.

X Q. 231. Do you know of an apparatus known as the Magin apparatus?

A. I have heard of it.

X Q. 232. Have you ever seen one of them?

A. Yes, sir.

X Q. 233. Where have you seen them?

A. Up to Farquhar's, on West Main street.

X Q. 234. When did you first see such a beer apparatus?

A. Oh, that is quite a number of years ago. I couldn't tell you how long ago.

X Q. 235. About when was it, giving me the year?

A. It may be four years ago or five years ago, or six years ago, or somewhere along there.

X Q. 236. Wasn't it eight or ten years ago?

A. No, sir; I don't know as it was as long as that. I have seen so many, of course I never kept account of them. I sometimes repair the pipes and see they have a beer machine and don't remember when they put them in.

X Q. 237. There is a great many of them in Rochester, isn't there?

A. Yes, sir.

X Q. 238. And you have to repair and do with them from time to time?

A. I repair very little beer machines.

X Q. 239. But you have repaired them?

A. I have repaired the pipes on the couplings or something like that. I never repaired any beer machines.

761 X Q. 240. The pipes and couplings connected with the beer machines you mean, do you not?

A. Yes, sir.

X Q. 241. And that work you have done personally, have you?

A. Yes, sir.

X Q. 342. Didn't you go into Meinhard's cellar when you were there making these repairs?

—. No, sir.

X Q. 243. Were you never in his cellar to examine the lower ice box?

A. No, sir.

X Q. 244. Do you know that there was a lower ice box in the cellar?

A. No, sir; I do not.

X Q. 245. Had you taken out any of the supply pipes then you would have had to have gone into the cellar, wouldn't you?

A. Yes, sir.

X Q. 246. You think you were at Meinhard's how long doing this repairing?

A. I suppose I might have been two or three hours. Of course, I can't tell very well, it is so long ago.

X Q. 247. It is difficult for you to remember very distinctly what you did see there, isn't it, at this late date?

A. That is all I seen; I fixed the top of the box and that is all.

X Q. 248. You have constantly to do repairing of pipe and things of that kind, haven't you?

A. Yes.

X Q. 249. And have had for the last ten years?

A. Yes, sir.

X Q. 250. Would you say that you could testify positively as to each and every job you have done during the last ten years?

A. No, sir.

X Q. 251. How, then, is it possible for you to remember so distinctly about what you did at Meinhard's on this one occasion?

A. Because he showed me what he wanted done.

X Q. 252. Doesn't every man show you what he wants done?

A. No, sir; some of them do and some don't.

X Q. 253. Can you remember every job you did during the last ten years where the man showed you what he wanted done?

A. No, sir; I couldn't.

762 X Q. 254. What was the next job that you did after going from Meinhard's?

A. I couldn't tell that.

X Q. 255. What was the job that you were working on just before you went to Meinhard's?

A. Repairing.

X Q. 256. Where?

A. I was repairing at that time more or less all around.

X Q. 257. Where were you repairing the job before you went to Meinhard's?

A. I couldn't tell you that.

X Q. 258. Don't you think it a little strange that you can come here and testify on your oath precisely what you did at Meinhard's when you can't tell me what you did before nor after?

A. I repaired pipes at different places. Of course, I could tell you if I looked the books over and be able to trace it up and think the matter over. Where you have so many—ten or twelve—jobs to go to, and sometimes you go and sometimes your man goes.

X Q. 259. You hav'n't looked at your books to-day or within the

past two weeks to aid your recollection as to what you did at Meinhard's, have you?

A. No, sir.

X Q. 260. Can you tell me when after this occasion we are talking about you did any work of any kind for Meinhard?

A. When; after?

X Q. 261. Yes; the very next job after. When was it?

A. It may have been the day after.

X Q. 262. Do you know that you did?

A. Repaired some water pipes there and his wash basin.

X Q. 263. Pay attention to the question, which is, What was the next job that you did for Meinhard after taking the coils out of the upper ice box?

A. I repaired some wash basins and repaired some closets.

X Q. 264. That is the next job, is it?

A. Yes, sir.

X Q. 265. And will your books show that?

A. I think they will.

X Q. 266. Do you know whether they will?

A. I suppose they will.

X Q. 267. What was the next job you did after that at Meinhard's?

763 A. There was different jobs, of course—repairing gas and fixing burners and everything else.

X Q. 268. Didn't you understand me to ask what the next job was?

A. I couldn't tell what the next job was; I haven't got it down so fine as that.

X Q. 269. But you can tell about these coils?

A. Yes, sir; I can tell about the coils, for I know what he told me to do.

X Q. 270. Is that the only thing Meinhard ever told you to do?

A. He has told me to repair water pipes when they were leaking and that I should look at it.

X Q. 271. Can you tell me each and every occasion that you did that for Meinhard?

A. I may have been to Meinhard's half a dozen times.

X Q. 272. I ask if you can tell me each and every occasion that you did the work for Meinhard when he told you what to do.

A. Probably I could by looking the book over.

X Q. 273. I didn't ask about your book, nor make any reference to your book; I asked if you could tell me from recollection.

A. At Meinhard's I fixed that part there on top and I repaired some closets, and, I think, fixed the gas there and done different repairing around, and, I think, run some gas pipe.

X Q. 274. You have testified that it is because Meinhard told you what to do that you could remember the removal of these coils, and you have also testified that Meinhard told you to do other things?

A. Yes, sir.

X Q. 275. Now, what other things did Meinhard tell you to do?

And give them to me in the order of succession in which they were done and the dates in which they were done.

A. I couldn't tell the dates.

X Q. 276. Why can't you do that when Meinhard pointed out what to do in precisely the same way and same means that you can tell us about these coils?

A. I couldn't tell you the dates, because it was done at different times.

X Q. 277. And you can't tell the dates when you removed
764 these coils, can you?

A. I can tell by looking on the books about when it was.

X Q. 278. About when was it?

A. Can't tell you unless I look at the book.

X Q. 279. You can't tell at all without looking at your book?

A. It was done about those years, I said.

X Q. 280. What years did you say?

A. I suppose it was around seven or eight years ago or probably nine years ago.

X Q. 281. What years did you say it was done in?

A. It was done before he moved away from here—a year or two before he moved away—and I think he was left there six years and I think his wife is dead six years.

X Q. 282. Then it was done a year or two before he moved from Falls Field?

A. Yes, sir.

X Q. 283. Was it a year before?

A. Yes, sir; maybe longer.

X Q. 284. As long as two years?

A. It may have been 1878 or 1879 or 1880; 1878, I think, or along there.

X Q. 285. Didn't you say it may have been 1878, '9, or 1880?

A. Yes, sir.

X Q. 286. And didn't you say it was a year or two before Meinhard moved from Falls Field?

A. I think it was. I think Meinhard was away from Falls Field six or seven years, and I think six years since his wife was dead.

X Q. 287. Didn't you say on your direct examination that it must have been in 1876 or 1877?

A. Well, it may have been there.

X Q. 288. And didn't you in your affidavit to which you have referred say that it was in the spring or summer of 1878?

A. Yes; it may have been there. Of course, I can look in my book and can tell you. Of course, I would have to look that over carefully in the book to tell anything about it.

765 X Q. 289. Don't you think it is a rather trifling business to come here and proceed and testify the way you have under oath when you don't know anything about it?

A. I don't know why it should be, because if I knew I was coming here to-day I should come prepared.

X Q. 290. Didn't you know you were coming here to-day?

A. No, sir.

X Q. 291. How did you get here?

A. I was told to come here.

X Q. 292. Then you knew you were coming?

A. No, sir; I didn't know it.

X Q. 293. Who told you to come here?

A. Somebody sent up there.

X Q. 294. You knew why you were coming, didn't you?

A. I thought I was coming here for five minutes. If I knew you were going to ask so many questions I should have come prepared and could tell you all about it.

X Q. 295. Didn't you know for what purpose you were coming here?

A. Yes, sir; I was coming here for to give my idea about this arrangement here, what I done on it, and to tell what I done on it.

X Q. 296. You recollect my pressing you to go and get your book, don't you?

A. Yes, sir.

X Q. 297. Now, you see, if you had gone and got that book we would have been able to fix this date if your books contained anything about it, don't you?

A. I suppose we could.

X Q. 298. Do you realize the fact that you have given not less than six or eight different years in which you did this repairing at Meinhard's?

A. Of course I have no recollection of exactly the year unless I look in the book, because I have got everything to attend to and supervise and keep the men at work and everything else.

X Q. 299. Having so much in your head, isn't it likely that you are mistaken about removing the coils from Meinhard's ice box?

766 A. No, sir; I am not mistaken. I removed the coils myself, so I cannot be mistaken about it.

X Q. 300. With so much in your head, isn't it likely that you have got these coils confused with coolers that you removed from Meinhard's upper ice box?

A. I removed them coils of pipe that were in there. That is what I done.

X Q. 301. I ask you, accepting your excuse for your multiplicity of dates that you have so much in your head, whether it is not likely that you have confounded the removal of the coils with the removal of the coolers from Meinhard's upper ice box?

A. Of course, I don't know what you suppose to be coolers. I don't know what your opinion about that is. I know all I done is to remove those coils, and if you call them coolers, of course, the ice was on there to cool the beer, and I suppose you would call them coolers.

X Q. 302. You have never called them coolers, have you?

A. They are supposed to act as coolers.

X Q. 303. Have you ever called them coolers?

A. I should think they would be coolers if you have ice on them. If you haven't got no ice on them they ain't coolers.

X Q. 304. Have you ever called those things that you removed from Meinhard's upper ice box, coolers?

Objected to by the defendants' counsel upon the ground that the witness has already answered that question twice.

A. I suppose they are supposed to be coolers when there is ice on them. That is what they are calculated for.

X Q. 305. Did you understand me to ask what you supposed they were?

A. I would take them to be coolers, according to the way they are placed there.

X Q. 306. You are a man of pretty fair education, aren't you?

A. Well, I suppose I know as much as some of them.

767 X Q. 307. And you understand the English language, don't you?

A. Yes, sir.

X Q. 308. Didn't you understand that question that I put to you about coolers?

A. No; I don't know as I fairly understood it.

X Q. 309. Now, I will ask it again, and before you attempt to answer it tell me whether you understand it or not, and then answer it. Have you ever called what you removed from Meinhard's upper ice box coolers? Now, do you understand that?

A. Have I ever called what I removed from Meinhard's ice box coolers?

X Q. 310. Yes.

A. Well, they would be coolers the way they were used there.

X Q. 311. Didn't you understand that question?

Defendants' counsel objected to this manner of cross-examining a witness after he has answered this question no less than five times.

Complainant's counsel refers the court to the record, from which it will appear that the witness has not answered the question, and, on the contrary, for reasons best known to himself, has repeatedly evaded it, and to show the court that such is the fact the counsel proposed to repeat the question until it was answered. The complainant's counsel stated that the last question was withdrawn for that purpose.

X Q. 312. Have you ever called the things that you removed from Meinhard's upper ice box coolers?

A. I would call them coolers.

X Q. 313. Have you ever called them coolers?

A. Yes, sir; I would call them coolers.

X Q. 314. Have you ever called them coolers? Don't you know the difference between have and did call them?

A. Yes, sir; I would call them coolers.

768 X Q. 315. Have you ever called the things that you removed from Meinhard's upper ice box coolers.

Defendants' counsel objected to the question that the witness has already answered it.

X Q. 316. (Question repeated.)
A. Yes, sir.
X Q. 317. When?
A. When I called them coolers?
X Q. 318. When did you call them coolers, those things which you removed from Meinhard's upper ice box?
A. That is, when I took them out and supposed to be coolers. When he told me they were coolers I took them out.
X Q. 319. Meinhard told you they were coolers, did he?
A. Yes, sir.
X Q. 320. And then you called them coolers?
A. Yes, sir.
X Q. 321. Have you ever sworn that you removed coolers from Meinhard's upper ice box?
A. I didn't say coolers; I said coils or pipe. I removed coolers or coils of pipe.
X Q. 322. You swore that you removed coils of pipe?
A. Coolers or coils of pipe.
X Q. 323. Did you ever swear that you removed from Meinhard's upper ice box coolers, without reference to their being coils of pipe?
A. I swore they were coolers or coils of pipe. That is what I swore.
X Q. 324. When?
A. When I made the affidavit.
X Q. 325. Now, to show the value of your recollection, let me ask you whether you recognize this statement: "The work I done at that time consisted in taking out three small collers which lay in the bottom of the upper ice box, through which the beer passed on its way from the ice box in the cellar to the faucets in the beer ice box, from which it was drawn for consumption."
A. Yes, sir.
X Q. 326. What do you recognize it as being?
A. What is that?
769 X Q. 327. What do you recognize that extract which I quoted as being from?
A. Because it states what was done.
X Q. 328. Do you recognize that as being an extract from your affidavit given in the case of Magin against McKay and against Welker?
A. Yes, sir.
X Q. 329. Is that a copy of your affidavit (showing paper to witness)?
A. Yes, sir.

The copy identified by witness offered in evidence and marked Defendants' Exhibit Cassebeer Affidavit of September 17, 1885.

X Q. 330. Do you in that affidavit once use the word "coil"?
A. Yes, sir.
X Q. 331. Referring to it?
A. Coolers or coils.

X Q. 332. Read it from the affidavit.

A. From the beginning?

X Q. 333. No. Read that part of the affidavit where the word cooler or coil is mentioned or where the word coil alone is mentioned.

A. It don't say anything about coils here. It is "coolers."

X Q. 334. Your affidavit, then, only makes mention of the word "coolers"?

A. Yes, sir.

X Q. 335. How do you account for the fact that throughout your present examination you have used the word "coils" and not once the word "coolers," whereas in your affidavit you use the word "coolers" and make no mention of the "coils"?

A. Because we generally use the word coils more than coolers, because we have so much coiling to do.

X Q. 336. How did you come to use that particular word, to wit, "coolers," in your affidavit when "coils" was so much more familiar to you?

A. Because they were supposed to be the same.

X Q. 337. You regarded it the same, did you?

A. Yes, sir.

770 X Q. 338. Did you use that word or was that word put there by the man who drew the affidavit?

A. Put there by the party who drew the affidavit.

X Q. 339. You would have said "coils," wouldn't you?

A. I should think I would if I had wrote it out myself.

X Q. 340. Have you never heard the fact that Meinhard had both coolers and coils at different periods in that upper ice box?

A. No, sir.

X Q. 341. Have you ever read a copy of Meinhard's testimony?

A. No, sir.

X Q. 342. Never had it read to you?

A. No, sir.

X Q. 343. When you talked with Meinhard about this matter did he make any mention of the coolers?

A. He told me he wanted the coolers taken out, them coils of pipe.

X Q. 344. He told you he wanted those coolers and coils of pipe taken out, did he?

A. Yes, sir.

X Q. 345. You remember distinctly his using those words?

A. Yes, sir; he used those words.

X Q. 346. Repeat again the exact words he used.

A. He told me he wanted those coils taken out and I took them out and soldered the faucets on.

X Q. 347. Didn't you say not——

A. He probably called them coolers, and I called them coils of pipe.

X Q. 348. Why did you make that interruption in the midst of my question?

A. Because that was the way he spoke to me about it.

X Q. 349. You remember his exact language?

A. He told me he wanted them coolers taken out, or the coils of pipe, whichever there was in there.

X Q. 350. Which did he say, coolers or coils of pipe?

A. I don't remember; he spoke of both things.

X. Q. 351. Why did you a moment ago pretend to give his exact language in saying coolers and coils of pipe?

A. Because the coils of pipe are put there and they act as coolers.

X Q. 352. You have stated what enables you to fix in your
771 mind what you did in connection with the repairing of Meinhard's beer-drawing apparatus was what Meinhard told you to do it?

A. Yes, sir.

X Q. 353. Now, what I want you to state is exactly what he did tell you.

A. He told me to take the coolers out. That is what he told me.

X Q. 354. Now it is coolers, is it?

A. Yes, sir.

X Q. 355. And not coils of pipe?

A. No, sir, because they consisted of coils of pipe, these coolers did.

X Q. 356. I didn't ask what they consisted of, but what Meinhard said; whether coolers or coils of pipe.

A. He said coolers to me.

X Q. 357. Why didn't you use the word, then, coolers on your examination to-day when you did use it in your affidavit and when Meinhard called them coolers?

A. Because I stated just what I done in my affidavit.

X Q. 358. You have testified, haven't you, that these zinc waste pipes did not extend more than from a half an inch to an inch above the bottom of the ice box?

A. I told you I didn't measure that.

X Q. 359. Didn't you tell me in answer to my cross-questions that the pipe didn't extend to exceed an inch, and you thought half an inch, above the bottom of the ice?

A. Yes, sir; inside, but they may have been longer on the bottom.

X Q. 360. To avoid any misunderstanding, tell us exactly how far these zinc waste pipes extended above the bottom of the upper ice box.

A. They may have extended an inch or half an inch. I didn't measure them.

X Q. 361. Didn't exceed an inch?

A. I don't think so and I am not sure.

X Q. 362. And about half an inch?

A. They were high enough so the water wouldn't run down.

X Q. 363. And you have also testified, I believe, haven't you, that these zinc waste pipes didn't exceed half an inch in diameter?

772 A. I testified that I didn't measure the size, and they was big enough to have this other pipe slip through them.

X Q. 364. These other pipes were quarter of an inch, you said?

A. Yes, sir.

X Q. 365. And you said these zinc pipes were a little larger than the outside of quarter inch?

A. They may have been a quarter of an inch or larger. I didn't measure the inside of the diameter of them.

X Q. 366. Did you say they were a little larger than the outside of the quarter-inch beer pipe?

A. Yes, sir; they were larger to slip through easy.

X Q. 367. And didn't you say you thought not to exceed a half inch in diameter?

A. They may be half an inch or larger.

X Q. 368. How much larger?

A. I didn't measure them.

X Q. 369. How much larger, in your judgment, as you saw them there?

A. I should think maybe three-quarters of an inch or an inch. I didn't measure the inside.

X Q. 370. If they were three-quarters or an inch, how did they get the three-eighths-inch rubber pipe over the opposite end?

—. They may have reduced them. That is something I don't know. All I done was to fix the top of the pipes.

X Q. 371. Seeing the dilemma you are in, you answer that the lower end of those pipes may have been reduced in size. Do you know that?

A. No, sir; I don't, for I didn't examine them.

X Q. 372. Now tell us, according to your best recollection, what was the diameter of these zinc waste pipes.

A. I should think they would be at least an half an inch inside or larger; I don't know; I didn't measure them.

X Q. 373. Your recollection is they were half an inch?

A. They were big enough to let those pipes through, or they might have been big enough for the couplings to slip through, and then they would be larger.

773 X Q. 374. Did you slip any of the couplings through?

A. No, sir.

X Q. 375. Then why do you refer to that fact?

A. Because they are mostly all made in that way.

X Q. 376. You are referring to the Magin apparatus, are you?

A. Most any apparatus.

X Q. 377. What apparatus are you referring to where the pipes are large enough?

A. The Magin.

X Q. 378. You remember testifying that this rubber hose was three-eighths inch, don't you?

A. Yes, sir; and they may have been larger. I didn't measure it; only by looking at them.

X Q. 379. Have you at any time before on your examination said they might have been larger?

A. I think I have.

X Q. 380. Now, let me read you, after all you have testified to, a

portion of your affidavit and see if you recognize the statements as true: "After taking out the coolers I connected the supply pipes again. While doing this work I examined this apparatus to see if it was all right and in good working order, and recollect seeing in this apparatus three one-inch tin pipes, about eighteen inches long, soldered into the bottom of the upper ice box and projecting four or five inches above the bottom, and through each tin pipe one of the supply pipes passed."

A. All except the small tin pipes. I didn't measure them, of course, and guessed on them.

X Q. 381. You guessed on that in your affidavit, did you?

A. Yes, sir.

X Q. 382. Now, what other parts of your affidavit did you guess at?

A. What does it say in the affidavit there?

X Q. 383. I will read it to you again: "After taking out the coolers I connected the supply pipes again. While doing this work I examined this apparatus to see if it was all right and in good working order, and recollect seeing in this apparatus three
774 one-inch tin pipes, about eighteen inches long, soldered into the bottom of the upper ice box and projecting four or five inches above the bottom, and through each tin pipe one of the supply pipes passed."

A. That is right.

X Q. 384. Do you mean this statement from your affidavit is?

A. Yes, sir; all excepting the tin pipes.

X Q. 385. That you guessed at?

A. I didn't measure them.

X Q. 386. That you stated in your affidavit under oath upon guess, didn't you?

A. Yes, sir; I couldn't tell how much they measured.

X Q. 387. What I want to know is what other parts of this affidavit did you guess at.

A. No other part.

X Q. 388. Now, read this affidavit carefully and before I ask you any more questions about it tell me whether there are any other statements there which you guessed at.

(The witness examines the paper.)

A. No, sir.

X Q. 389. Then you didn't see, as you stated in your affidavit, in this apparatus three one-inch tin pipes, about eighteen inches long, soldered into the bottom of the upper ice box and projecting four or five inches above the bottom?

A. I seen some pipes there, but I didn't measure the length of them.

X Q. 390. But you didn't see any such conditions of things as you testified to in your affidavit, did you?

A. As to the length, I didn't measure the length.

X Q. 391. Didn't you tell us to-day under oath that these pipes didn't project above the bottom to exceed an inch?

A. Yes, sir.

X Q. 392. Now, you saw that, didn't you?

A. Yes, sir; just projected enough so you could bend a pipe in good shape.

775 X Q. 393. If you saw that when you actually took out the coils in Meinhard's upper ice box why did you say in your affidavit, given December 17, 1885, "I examined this apparatus" * * * and that the pipes projected "four or five inches above the bottom"?

A. It may project that and it may less, but I think they only project about an inch, though I am not sure.

X Q. 394. But you are not certain whether they project an inch, are you?

A. No, sir; they project enough so you could turn on the pipe and they may project more, and depends on how much room there was there.

X Q. 395. Are you guessing at what you testified to to-day?

A. About the tin pipes, I am guessing on them.

X Q. 396. Then your testimony to-day, as well as your statements in the affidavit about the tin pipes, is guess-work?

A. About the tin pipes, I couldn't tell you what length they were or how much they projected.

X Q. 397. Isn't it a fact that the testimony you have given to-day as well as the statements made in your affidavit are guess-work?

A. No, sir; not all of them.

X Q. 398. Now, if it is not guess-work, what are the facts about those tin pipes?

A. I didn't measure the length of them and didn't know the size of them and only guessed on them, because I formed my opinion of whatever pipe run through there.

X Q. 399. Then isn't it a fact that you have guessed about them both to-day and when you gave this affidavit?

A. I suppose I did.

X Q. 400. You state in your affidavit that these tin pipes were "about eighteen inches long." You don't know how long they were, do you?

A. No, sir; not exactly.

X Q. 401. Then you guessed at that?

A. Yes, sir; it don't state the length there and says "about."

776 X Q. 402. You didn't see that these pipes projected at all beneath the bottom of the box, did you?

A. They must have projected some.

X Q. 403. Did you see it?

A. Yes, sir.

X Q. 404. When did you see it?

A. When I looked at the pipes.

X Q. 405. Didn't you tell us in the fore part of your cross-examination that you didn't take off the rubber pipes?

A. I didn't take no pipe off.

X Q. 406. Then how do you know the tin pipes projected?

A. Because the rubber pipes were fastened onto them.

X Q. 407. You imagine they were fastened in that way?

A. I seen them.

X Q. 408. Do you know what was inside of the rubber pipe?

A. This tin-lined pipe went through them.

X Q. 409. That the court may fully understand the manner in which you are swearing I desire you to answer me this question in view of all you have stated: Do you know that the rubber hose that you say you saw was attached?

A. They were attached to them tubes that went through the upper ice box.

X Q. 410. How do you know that?

A. Because they wasn't laying loose.

X Q. 411. Is that the only way you know it?

A. By looking at them.

X Q. 412. Is that the only way you know it?

A. What other way can you know it unless you look at them?

X Q. 413. Do you come here and testify under oath, and have you so little regard for an oath that you will testify that a rubber pipe was annexed in a certain way, when you have told us repeatedly that you didn't see whether the tin pipes projected through the bottom or not?

Defendants' counsel objected upon the ground that the witness has already answered that question half a dozen of times,
777 and that the manner of the counsel in examining the witness is assumed for the purpose of confusing the mind of the witness and for no other purpose.

X Q. 414. (Question repeated.)

A. I know they were slipped on there and that is all I know.

X Q. 415. You didn't see the tin pipes, did you?

A. I seen the top of them.

X Q. 416. You saw the top in the upper ice box?

A. In the bottom of them and never measured the length of them.

X Q. 417. You saw the tin pipes projecting through the botton of the upper ice box?

A. Yes, sir.

X Q. 418. You didn't see them projecting down through the bottom, did you?

A. They must have went through the bottom to connect the rubber hose on them.

X Q. 419. Did you see it?

A. They went through the bottom of the upper ice box.

X Q. 420. Did you see those pipes coming through the bottom of the upper ice box?

A. Yes, sir; I did.

X Q. 421. How did you see it?

A. By looking at them.

X Q. 422. Where did you look from?

A. From the front of them.

X Q. 422. How were you standing in relation to this upper ice box when you saw them?

A. I was standing in front of it.

X Q. 424. Did you look into the upper ice box?

A. Yes, sir.

X Q. 425. And you saw it in that way, did you?

A. Yes, sir.

X Q. 426. And that is the only way you saw it?

A. I saw it go through the top and looked at the bottom.

X Q. 427. You looked at the bottom?

A. Yes, sir.

X Q. 428. And saw these tin pipes projecting, did you?

A. Yes, sir.

778 X Q. 429. And that you swear to?

A. Yes, sir; I saw them projecting, and must project.

X Q. 430. I don't ask whether they must, but whether you saw it.

A. Yes, sir.

X Q. 431. Did you see it when you looked into the closet under the ice box?

A. Yes, sir.

X Q. 432. Then the rubber hose didn't fit tight up against the bottom of the box?

A. No, sir; I suppose there was a little room there besides.

X Q. 433. Do you remember that?

A. Yes, sir; I do remember it.

X Q. 434. Now, suppose it should appear as a fact that you have repeatedly testified that you didn't see the pipe projecting below the bottom. Which of your statements are we to believe?

A. That would be for you to decide.

X Q. 435. Is all the testimony which you have given to-day equally as true as that which you have given as regards to seeing these tin pipes projecting from the bottom of the upper ice box?

A. Yes, sir.

X Q. 436. Then if that is false and the court should so conclude, all your statements are false. Is that true?

A. No, sir; I don't know that that would be the case; one statement may be true and the other may not be true.

X Q. 437. Will you tell us some rule by which the court may be able to pick out the true statements and the false statements where your statements are in direct conflict?

A. I couldn't tell you what rule.

X Q. 438. You have testified, haven't you that you didn't pull the beer-supply pipes up at the time you removed these coils?

A. I didn't pull them; I bent them. By bending them they went up a little.

X Q. 439. What I mean is you have testified that you cut the beer-supply pipe so as to take out the coil?

A. Yes, sir.

X Q. 440. And then soldered the connection on without removing the beer-supply pipe or drawing it up from the cellar?

A. Yes, sir.

779 X Q. 441. Having that statement fresh before your mind, will you explain this statement in your affidavit: "In fact, while making these repairs I pulled the supply pipes through these tin pipes to connect them"?

A. Yes, sir; had to pull them up or down so as to get them coupled on.

X Q. 442. Didn't you testify in answer to the last two or three questions that you didn't pull the pipes up?

A. I had to shove one way or the other to connect them. I didn't pull them way through the tubes.

X Q. 443. You have testified that you didn't go down into the cellar, haven't you?

A. Yes, sir.

X Q. 444. How could you pull those beer-supply pipes up without uncoupling them in the cellar?

A. Mr. Meinhard uncoupled them in the cellar.

X Q. 445. You remember that now, do you?

A. I suppose he had.

X Q. 446. You don't know whether he had or not, do you?

A. No, sir; I know there was enough pipe on top so I wouldn't need to shove them way through.

X Q. 447. When you didn't know that fact why did you tell us that Meinhard did uncouple them?

A. He may have left them on for all I know.

X Q. 448. Why did you testify that he did?

A. He may and he may not.

X Q. 449. Why did you testify that he did?

A. I don't know why I did.

X Q. 450. You now remember pulling the pipes up, don't you?

A. I pulled them a little so as to get them catched on the couples.

X Q. 451. You pulled them a little, did you?

A. Yes, sir.

X Q. 452. How much was that?

A. Probably an inch and probably two inches; just enough to get them, enough to bend them.

X Q. 453. The pipes must have been disconnected in the cellar?

A. Not necessarily.

780 X Q. 454. And yet you said Meinhard went down and uncoupled them, didn't you?

A. He might have gone down, but I don't know.

X Q. 455. Didn't you say he did?

A. Yes, sir; I suppose he did.

X Q. 456. The fact is you don't know whether he did or not?

A. No, sir; I do not.

X Q. 457. And you guessed at that, didn't you?

A. Yes, sir; I guessed at that, but that had nothing to do with the affidavit.

X Q. 458. Are you going from here directly to your place of business?

A. No, sir; I am going up West avenue.

X Q. 459. When will you be at your place of business?

A. I couldn't tell you what time I will be there. I am in and out all the time.

X Q. 460. Will you be there within an hour?

A. No, sir.

X Q. 461. Will you be there within two hours?

A. No, sir; not this evening.

X Q. 462. Who is in charge of your place of business while you are away?

A. In charge of myself.

X Q. 463. Who is in charge while you are away?

A. I have a young man there.

X Q. 464. Now, Mr. Witness, I must insist upon your going directly back to your place of business and producing that book which shows the charge when you did the work for Meinhard. Will you do so with the understanding that I will pay you for whatever time you lose in doing it?

Defendants' counsel stated that it is now five minutes after seven, and it would seem as if it was proper and regular to adjourn until to-morrow morning at some seasonable hour, and defendant's counsel will request the witness to bring that book with him here to-morrow morning, as the defendants' counsel desire it pro-
781 duced in court for the satisfaction of complainant's counsel, and while at home this evening the witness is requested to look up that book and find the entries which he has testified to.

The WITNESS: Can they make me produce that book?

The complainant's counsel states that from the disclosures which have been made during the course of this witness's examination he is justified in assuming that most anything might take place if the witness should have until to-morrow morning to produce that book, and therefore he insists, and for that purpose he has arranged with the notary that the witness returns to his place of business with the notary and delivers that book into his possession with the understanding that whatever the cost may be to this witness will be cheerfully paid by the complainant's counsel. Furthermore, complainant's counsel strenuously objects to the witness so much as opening the book until it is produced here by the notary at the opening of the session to-morrow morning, when a full opportunity will be given to him to turn to the charge in his book which he says relates to the repairs on the Meinhard apparatus.

Redirect examination by Mr. SULLIVAN, counsel for defendants:

R. D. Q. 465. Will you on your return home to-night find that book and bring it here to-morrow morning at the hour of ten o'clock if you succeed in finding it?

A. I will.

R. D. Q. 466. Then you may bring it here to-morrow morning.

Complainant's counsel directs the attention of the court to the most extraordinary fact that the defendants' counsel is un-

782 willing, as is quite obvious from the course he has pursued, of having this witness deliver the book into the hands of notary before he has had an opportunity to tamper with it; and he further directs the attention of the court to the fact, which he insists is established by the evidence of this witness, that if the book be produced to-morrow under such circumstances it will be totally unreliable as evidence of anything, and again insists that that book be delivered to-night to the notary, and, to avoid any inconvenience to the witness, the notary, with the complainant's counsel, will go to his place of business and wait until eleven o'clock for him.

Mr. BENNETT, resuming:

X Q. 467. Mr. Witness, is there any reason why you should not deliver that book to the notary to-night?

A. Because I may have it in my old book and may have it in my new one. I haven't looked the books over.

X Q. 468. Where are your old books and where are your new ones?

A. I have them filed away and would have to hunt them up.

X Q. 469. Didn't you find this book that contains that Meinhard charge when you made that affidavit December 17, 1885?

A. No; I don't know as I did.

X Q. 470. And it is possible, isn't it, that you may not have this book now?

A. I never looked the items up.

X Q. 471. You don't really know whether you have got that book or not; isn't that so?

A. I think I have it.

X Q. 472. When did you last see it?

A. Some time ago.

X Q. 473. When was that?

A. I occasionally look at it when I look at some old business that I have been doing.

783 X Q. 474. Tell me when you last looked at that book; you don't recollect having had that book or looking it up at the time you made your affidavit?

A. I may have looked at it.

X Q. 475. Do you remember about five minutes ago saying you didn't look at it?

A. I never looked at the items.

X Q. 476. You looked at the cover, you mean?

A. Yes, sir; always look at the cover of a book before I open it.

X Q. 477. But you didn't look in it—did you look in it or didn't you?

A. I looked in when I made a charge.

X Q. 478. Then you didn't look into it for anything in connection with this Meinhard business?

A. No, sir; but I may have looked at the time when it was done, but never to the items.

X Q. 479. Then there would be a difference between the time it was done and the items; is that what you mean?

A. Well, there was different things done there at different times.

X Q. 480. This book you were using at that time to make charges in, if I understand you?

A. Yes, sir.

X Q. 481. Now just tell the court why it is that you can't deliver that book to the notary to-night.

A. Because I have too much business on my hands to do to-night.

X Q. 482. Don't you go back to your shop before it is closed to-night?

A. No, sir; the shop was closed long ago.

X Q. 483. What time in the morning will you get there?

A. I will be down here at ten o'clock to-morrow morning.

X Q. 484. What time will you get at your place to-morrow morning?

A. I couldn't tell you exactly, because I have to go to the west part of the city to-morrow morning.

X Q. 485. Before you go to your place?

A. No, sir.

784 X Q. 486. You go to your place first?

A. Yes, sir.

X Q. 487. Now, what time will you go there?

A. I couldn't tell exactly what time I will be there.

X Q. 488. Will you be there before seven o'clock?

A. No, sir.

X Q. 489. How long after seven will you be there?

A. I don't know. I may be late, and I may have to go somewheres, and there may be some orders at the house to go and see to.

X Q. 490. Describe the appearance of that book that has Meinhard's charges in.

A. One has a brown cover and one has got a red cover.

X Q. 491. You have the two books distinctly before you in your recollection, have you?

A. Yes, sir.

X Q. 492. So you could go and lay your hands right on them?

A. Yes, sir.

X Q. 493. So all you have to do is to go to your place of business and get out those two books?

A. Yes, sir; I would have to get the books, of course.

X Q. 494. Do you keep those books yourself?

A. Yes, sir.

X Q. 495. In your own handwriting?

A. Yes, sir.

X Q. 496. Keep them in ink, I suppose?

A. Yes, sir.

X Q. 497. And these charges to Meinhard come right along in the ordinary course of business, do they?

A. They may have been charged altogether. Of course I can't tell that.

X Q. 498. You can't tell how they might be charged?

A. They might be charged altogether, so much a day or so many hours.

X Q. 499. Have you any objection to delivering these books to the notary before you look into them?

A. Of course I would have to look them over to see what there is about it.

X Q. 500. It is enough for us to look over them and see
785 what they contain; and I ask you whether there is any objection on your part to delivering those books to the notary before you look into them; and, if so, what is that objection?

A. Well, the objection is, of course, I want to get an idea about what time there was work on that machine—the exact dates and things.

X Q. 501. You want to look into them first, do you?

A. Yes, sir.

X Q. 502. You don't want to bring them here and let us see just what they contain?

A. Yes, sir; I can bring them here. I haven't any objection to bringing them here to-morrow morning at ten o'clock.

X Q. 503. But you want to look into them first?

A. Yes, sir; but I don't want to change anything.

X Q. 504. Why do you want to see them first?

A. Because I want to see the charges and dates and everything else.

X Q. 505. Can't you do that just as well in our presence?

A. Yes, sir; I suppose so.

X Q. 506. Have you any objection to delivering these books into the possession of the notary before you look into them and when you next arrive at our office?

A. Well, I don't know as the court had got a right to ask a man to look at his private business. I can go to work and give a copy of it before a notary without bringing them down.

X Q. 507. You don't want to produce those books unless you are compelled to; is that it?

Defendants' counsel states that witness has already stated that when he returns home to-night he will endeavor to find those books and bring them here to-morrow morning at ten o'clock, when the counsel will have ample opportunity to inspect them to his heart's content.

X Q. 508. Now, Mr. Witness, I am going to employ a man to go from here to your shop and remain all night until you come
786 there if you will promise to deliver those books to him without looking into them when you arrive. Will you do so?

Defendants' counsel objects to occupying so much valuable time with this manner of browbeating a witness; that the witness has repeatedly and willingly offered to return to his home to-night and find those books and bring them here to-morrow morning at ten o'clock for the inspection of the complainant's counsel, and he will not and cannot

do anything more, and there is no occasion of complainant's counsel taking up any further time in the examination of this witness for that purpose.

Complainant's counsel again calls the attention of the court to the fact that defendants' counsel is aiding and encouraging the witness in the course which he is pursuing in refusing to deliver the books to the notary before he has had an opportunity to examine them.

X Q. 509. Former question repeated.

A. I will bring them here at ten o'clock to-morrow morning.

X Q. 510. Then you decline to deliver them into the possession of the notary before you look into them, do you?

A. I will bring them here at ten o'clock to-morrow morning.

X Q. 511. Answer my last question.

A. I will have them here at ten o'clock to-morrow morning.

Adjourned to October 25, 10 o'clock a. m.

OCTOBER 25—10 o'clock a. m.

The parties appeared as before.

The witness resumed, and, being further cross-examined, testified as follows:

787 X Q. 512. Have you with you the two books you refer-ed to last night?

A. I have one book.

X Q. 513. Why didn't you bring both of them?

A. Because I couldn't find one.

X Q. 514. Since when couldn't you find that one book?

A. Since I left here last night.

X Q. 515. Which book was it you couldn't find?

A. My first book.

X Q. 516. Then are we to understand you couldn't find the book that contains the charges for the work that you done for Meinhard in repairing his apparatus?

A. Yes, sir.

X Q. 517. Did you go to your store last night?

A. I was up to the store and up to the house.

X Q. 518. You went to the store last night, did you?

A. I was up to the store and to the house.

X Q. 519. I didn't ask about the house; I asked if you didn't go to the store last night after you left here.

A. I was there; yes, sir.

X Q. 520. And didn't you have your books out?

A. No, sir; I didn't have them at the store; I had them at the house.

X Q. 521. You took them to your house, didn't you?

A. Yes, sir.

X Q. 522. And you examined them at your house?

A. Yes, sir.

X Q. 523. Didn't you take more than one book with you to your house?

A. No, sir.

X Q. 524. Did you notice the fact that a moment ago you said you took your books to the house?

A. Yes, sir.

X Q. 525. How many books did you take?

A. This one here.

X Q. 526. Do you make oath that you took only one book from your store to your house last night?

A. Yes, sir.

X Q. 527. And you also make oath that you examined no books at your store last night?

A. Yes, sir.

788 X Q. 528. How, then, do you know that you couldn't find this first book?

A. Because I looked among my old papers.

X Q. 529. Did you open this book to see what it contained to know whether it was the first or second book?

A. I know it was the second book.

X Q. 530. I didn't ask if you knew it was the second book. I asked if you opened it to tell whether it was the first or second book.

A. I need not open it because I knew it wasn't the book.

X Q. 531. Did you open that book?

A. Yes, sir.

X Q. 532. Why didn't you tell me that first, when I asked if you looked at these books at your store?

A. I didn't look at them at the store.

X Q. 533. You opened it, didn't you?

A. Not at the store.

X Q. 534. When did you open the book first?

A. When I came home after my supper.

X Q. 535. You went to your store before supper, did you?

A. Yes, sir.

X Q. 536. Didn't you go direct from here to your store?

A. Yes, sir.

X Q. 537. When did this first book commence?

A. 1875; that is when I started in; in 1875, I think it was.

X Q. 538. And how far down did it extend?

A. Well, I suppose I had that book probably three or four years.

X Q. 539. And this book which you have produced started at that time, did it?

A. It started probably a little before that time.

X Q. 540. Then you have no books at the present time that will show the entres which you made during the first three or four years of your business?

A. No, sir; I have not.

X Q. 541. When does this book which you have produced commence?

A. It commenced in the year, I think, 1879.

X Q. 542. What time in the year 1879?

A. I think somewhere around the spring.

789 X Q. 543. Then all the entries contained in this book are for work done subsequent to the spring of 1879?

A. Yes, sir.

X Q. 544. Was anybody with you at your store last night?

A. No, sir.

X Q. 545. Was the man who was in charge while you were away there when you arrived?

A. No, sir.

X Q. 546. When did you last see this first book?

A. It may have been probably a year or two ago.

X Q. 547. When do you remember having it?

A. I think it was somewhere around a year ago.

X Q. 548. And when before that did you have that first book?

A. At various times.

X Q. 549. Can you account for its loss at this time?

A. Yes, sir.

X Q. 550. How do you account for it?

A. Because I have been moving four or five times since—let's see; have moved three times since I started that book.

X Q. 551. How long have you been at your present place of business?

A. Have been there since April of this year.

X Q. 552. And where did you move from here?

A. From 69 Franklin street.

X Q. 553. How long were you at 69 Franklin street?

A. About two years.

X Q. 554. Then isn't it a fact that you moved only once since you had this book?

A. No, sir; I moved before that.

X Q. 555. Didn't you say you had this book about a year ago?

A. I think I had; yes, sir.

X Q. 556. And you were at your present place since April?

A. Yes, sir.

X Q. 557. And the place before that for two years?

A. Yes, sir.

X Q. 558. Isn't it a fact that you have moved only once
790 since you last saw that book?

A. It may have been last fall I seen it last; before I moved.

X Q. 559. You don't know whether you have seen it since you moved or not?

A. No, sir.

X Q. 560. You didn't know last night that you had lost it, did you?

A. No, sir; I did not.

X Q. 561. Explain to us how much of a search you made for this book last night.

A. Searched through my papers, whatever papers I had.

X Q. 562. And did you also search at your house?

A. Yes, sir.

X Q. 563. Did you search again this morning?

A. Yes, sir.

X Q. 564. How long did you remain at the store last night?

A. Only a few minutes.

X Q. 565. What else did you do last night at the store besides looking for your book during this few minutes?

A. I went home and took my supper and looked for my books — home; the most of my books I have at home, and the rest of my papers.

X Q. 566. You say you were at your store last night for a few moments only?

A. Yes, sir.

X Q. 567. What else did you do there during those few minutes besides looking for this first book?

A. I didn't do anything more.

X Q. 568. Then when you got home did you look through this book which you have produced here this morning?

A. I looked through that book there and looked for the other books this morning.

X Q. 569. You looked through other books this morning?

A. Yes, sir.

X Q. 570. What other books did you look through this morning?

A. I looked through my old papers this morning.

X Q. 571. And couldn't find anything showing any charge for work done for Meinhard prior to 1879?

A. No, sir.

X Q. 572. Did you find any charge upon any of your books
791 or papers showing when you removed these coils for Meinhard?

A. There was a bill before that time that was done for Meinhard. That wasn't on that book; it was in the old book.

X Q. 573. You haven't that book or any duplicate of the bill, have you?

A. No, sir.

X Q. 574. Now, answer my question, which is whether you have any charge upon any of your books or papers which at the present time will show when you removed the coils for Meinhard.

A. Not on my books, but I can tell you the date when the other work was done.

X Q. 575. Have you any duplicate bill or any memoranda of any kind that will fix the date when you took the coils out of Meinhard's upper ice box?

A. I couldn't tell you without referring to Mr. Meinhard's books.

X Q. 576. You have no book or paper showing it, have you?

A. No, sir.

X Q. 577. Have you seen Mr. Meinhard this morning?

A. No, sir.

X Q. 578. Did you see him last night?

A. Yes, sir.

X Q. 579. You went to his place, didn't you?

A. Yes, sir.

X Q. 580. And how long did you stay at Meinhard's place last night?

A. Only a short time.

X Q. 581. Probably we know pretty near as well as you do how long you stayed there, but to test your judgment of the time let us know exactly how long you remained at Meinhard's last night?

A. About from half an hour to an hour.

X Q. 582. Didn't you go from your house to Meinhard's?

A. Yes, sir.

X Q. 583. And after you had had your supper?

A. Yes, sir.

X Q. 584. And after you had examined this book?

A. Yes, sir.

792 X Q. 585. And didn't you and Mr. Meinhard have a conversation lasting from a half hour to an hour?

A. No, sir.

X Q. 586. How long did the conversation last between yourself and Mr. Meinhard?

A. Probably fifteen minutes.

X Q. 587. Why did you go to Meinhard's last night?

A. I went there to see if there was any other account; that he paid me any other account before that.

X Q. 588. Didn't you go there to talk with him about this case?

A. I went there to see and look over what account he had against me or what account he paid me at the time.

X Q. 589. And you had a talk with Mr. Meinhard about these dates, didn't you?

A. Yes, sir.

X Q. 590. What did Mr. Meinhard say to you?

A. He showed me his book when he paid me his first account.

X Q. 591. Did he show you the bill which you rendered him for the work?

A. He showed me the book where he paid me $11 for the first work I done for him.

X Q. 592. Did he show you the bill which you rendered him for the work?

A. No, sir.

X Q. 593. He showed you where he had paid you $11, did he?

A. Yes, sir.

X Q. 594. And that was all?

A. Yes, sir; in the year 1878.

X 9 595. In the year 1878?

A. Yes, sir.

X Q. 596. What time in the year 1878?

A. In the summer or fall of 1878.

X Q. 597. Which was it, the summer or fall?

A. Somewhere probably around in the fall he paid me; October the 29th he paid me.

X Q. 598. Now, why did you say it was the summer or fall when you knew it was the 29th of October, 1878?

A. That is all right. The work might have been done a few months before that and the bill not rendered.

793 X Q. 599. Why did you say upon your oath that it was

the summer or fall, when you knew it was the 29th of October, 1878, from seeing his books?

A. The work might have been done in the summer and the bill might have been presented after two or three months or six months.

X Q. 600. I didn't ask when the work was done or what the work was. I asked you as to the date that Mr. Meinhard's books showed and you said the summer or fall of 1878.

A. Then the work was done.

X Q. 601. Why was it that you said the summer or fall of 1878, when you knew it was the 29th of October, 1878?

A. That was when he paid the bill. The work wasn't done then, but the bill was paid then. The work was done before that.

X Q. 602. Did this charge show what the work was?

A. No, sir.

X Q. 603. Did it show when you done the work?

A. No, sir.

X Q. 604. What else did Mr. Meinhard say to you during this conversation?

A. All he done was to look the date over when the bill was paid or what work was done.

X Q. 605. Repeat the conversation that took place between yourself and Mr. Meinhard last night.

A. There may have been some items in these items, some other little things for Mortimer street, but the amount was eleven dollars. That was the first work I done for Mr. Meinhard.

X Q. 606. Then neither you nor Mr. Meinhard could tell what work that payment of eleven dollars covered?

A. I know, because I know what work I done. It was for taking them coolers off.

X Q. 607. There was nothing to show it?

A. No, sir; I didn't have the bill to show it, but the amount was there and I know it was done.

X Q. 608. What work did you do for Meinhard on Mortimer street?

A. Put up some sinks and repaired pipes.

794 X Q. 609. At his place there?

A. At the place there. That was the Real school, and there was some charges there for Falls Field, and it was all in one bill, and eleven dollars, and it may have been separated so as to keep the Mortimer street separate.

X Q. 610. You don't know that, do you?

A. No, sir.

X Q. 611. All you saw at Mr. Meinhard's was that he paid you eleven dollars on the 29th of October, 1878?

A. Yes, sir.

X Q. 612. You don't know what it was for?

A. Yes, sir; I know it was for coolers, and that was done at the same time.

X Q. 613. Then it was for both?

A. Yes, sir; for repairs in general at different places?

X Q. 614. It was for everything he owed you up to that time?

A. Yes, sir.

X Q. 615. Now, are we to understand that you never did a job of any kind for Mr. Meinhard prior to the work included in this payment of eleven dollars?

A. Yes, sir.

X Q. 616. So that the first work you ever did for Mr. Meinhard must have been a short time prior to the 29th of October, 1878?

A. Yes, sir.

X Q. 617. And this you stick to?

A. Yes, sir.

X Q. 618. Notwithstanding what you may have testified to yesterday?

A. Yes, sir.

X Q. 619. Now, tell us what work you did at the Mortimer-street place.

A. I put up some pipes there for a sink and repaired a faucet outside.

X Q. 620. What kind of pipes were these?

A. Brace pipes and iron pipes, and there may have been some repairing.

X Q. 621. How long were you working at the Mortimer-street job?

A. It couldn't have been very long according to the amount of the bill.

X Q. 622. How long was it as you now recollect it, or have you no recollection of it?

A. I don't remember how long it was.

795 X Q. 623. Did you furnish this pipe?

A. I furnished some repairs and some pipe at different times and at Falls Field at the same time I was working there.

X Q. 624. And the whole charge for all this was eleven dollars?

A. Yes, sir; about eleven dollars.

X Q. 625. Who else was present at Meinhard's last night when you had your conversation with him?

A. Well—who else was present?

X Q. 626. Yes; that is what I asked you.

A. There was nobody present in the beginning.

X Q. 627. Who was present before you got through?

A. Mr. Sullivan stepped in for a few minutes.

X Q. 628. And did Mr. Sullivan look at this book of Meinhard's?

A. I think he did.

X Q. 629. Who told you to go to Meinhard's last night?

A. Myself told me.

X Q. 630. No one told you?

A. No, sir.

X Q. 631. Didn't Mr. Sullivan say he would meet you there?

A. I think he did.

X Q. 632. In what kind of a book was this entry of Meinhard's having paid you eleven dollars?

A. A little brown book.

X Q. 633. Was the entry in lead pencil or in ink?

A. It was in ink.

X Q. 634. State what the entry was.

A. It was for fixing that top.

X Q. 635. Did it say so?

A. Yes, sir. It stated, for so much time, fixing and repairing pipes.

X Q. 636. It didn't say anything about taking out coils, did it?

A. I think it did.

X Q. 637. Having seen that book last night, tell us your recollection of the exact wording of the charge.

A. I didn't see any bill of it, and only saw the amount.

X Q. 638. Then this book showed nothing but the amount?

A. That is all.

X Q. 639. Why did you say a moment ago that this charge
796 specified for repairing pipe, and you thought for removing coils, when it didn't show anything of the kind?

A. Not that bill, but I know what work I done at the time.

X Q. 640. Now, see if you can understand a plain question. You saw a book at Meinhard's last night, didn't you?

A. Yes, sir.

X Q. 641. What sized book was that?

A. Probably about eighteen inches long by six or seven inches wide. I didn't measure the size of it.

X Q. 642. What kind of a cover had it on?

A. Brown cover.

X Q. 643. You examined it?

A. I think it was a brown cover.

X Q. 644. You examined it, didn't you?

A. No; I didn't touch the book.

X Q. 645. Didn't you look at the entries in it?

A. Yes, sir.

X Q. 646. Did Meinhard turn to his account?

A. Yes, sir.

X Q. 647. Showing the amounts of money he paid you at different times?

A. Yes, sir.

X Q. 648. Now, exactly what did that book contain in the way of entries, so far as related to the amounts paid you?

A. Only contained the amount paid to different parties; to me eleven dollars, October, 1878.

X Q. 649. It contained, then, simply an entry of eleven dollars paid you a certain time?

A. Yes, sir.

X Q. 650. Without reference to the character of the work?

A. That was the amount paid at the time.

X Q. 651. It made no reference to the character of the work—that eleven dollars?

A. There was no itemized bill there.

X Q. 652. Did it make any reference whatever to the character of the work that eleven dollars was for?

A. No, sir.

X Q. 653. Now, did this book also contain the other amounts of money that Meinhard had paid you at different times?

A. Yes, sir.

797 X Q. 654. When next did Meinhard pay you money after October 29, 1878?

A. He paid me in 1879.

X Q. 655. How much did he pay you in 1879 and what time was it in 1879?

A. He paid me between sixteen and seventeen dollars.

X Q. 656. What time in 1879 was that?

A. That was in the fall of 1879.

X Q. 657. Didn't you take a memoranda from Meinhard's book showing the different amounts he paid you at different times?

A. I think I got only the date.

X Q. 658. Now refer to the memoranda which you took last night from Meinhard's book and read off what it contained.

A. The next account he paid December 17, 1879.

X Q. 659. Let me look at that memoranda, please.

(Produced by the witness and contains the following: "October 29, 1878, $11.00.")

X Q. 660. Is that the way it is intended?

A. Yes, sir.

(Also, "December 17, 1879, $13 50.")

X Q. 661. When next did Meinhard make a payment to you for work done?

A. I think the other charges were in 1880.

X Q. 662. And what time in 1880?

A. I don't remember.

X Q. 663. You didn't think it of consequence enough to take off that date, did you?

A. No, sir.

X Q. 664. What is the earliest charge that you have on this book you have produced against Meinhard?

A. 1879.

X Q. 665. Turn to that charge of 1879.

Witness is handed book by the complainant's counsel.

A. There is the charge of 1879.

798 (Witness refers the counsel to entry on page 72 of witness' account book.)

X Q. 666. Are any of those items for fixing pipe?

A. Yes, sir; for fixing gas pipe mostly.

X Q. 667. Did you understand me to ask what kind of a pipe it had reference to?

A. No, sir; you didn't say what kind.

X Q. 668. Then why did you stick in "gas pipe"?

A. Because it shows there that it is.

X Q. 669. Haven't I the book before me, and don't you think I can read?

A. That is all right enough. If you want to know I have got to tell you.

X Q. 670. Hereafter volunteer no statements and answer my question, which is, Are any of these items for repairing pipe?

A. Yes, sir.

X Q. 671. You don't find in this book which you produced, do you, the account amounting to $13.50 which Meinhard paid you December 17, 1879?

A. I found it all in that whole amount there.

X Q. 672. Do you find in your book which you have produced the account — to $13.50 which Mr. Meinhard paid you on December 17, 1879?

By Mr. SULLIVAN, counsel for the defendants:

R. X Q. 673. Do you desire to look at the book?

A. Yes, sir.

Mr. BENNETT, counsel for the complainants, resumes:

X Q. 674. What do you want to look at this book for?

A. Well, I want to kind of equalize and see and get an idea of what was done.

X Q. 675. Look at this book and show me the account which amounted to $13.50.

(Witness shown book.)

A. The $13.50 is in the whole amount, $19.98.

799 X Q. 676. Now, select out the items which compose the $13.50 and read them off item by item.

A. Well, I don't remember, because the bill was separated.

X Q. 677. You remember the bill was separated, do you?

A. Yes, sir.

X Q. 678. Doesn't your book show that from September 24th to November 21st you did work for Meinhard amounting to $19.98?

A. Yes, sir.

X Q. 679. How do you account for the fact that he only paid you $13.50 December 17, 1879, if it has reference to that account?

A. It may be separated, separate bills for different places; that is the only way I can account for it. There may have been a deduction on the bill for all I know.

X Q. 680. Do you usually make a deduction of six or seven dollars upon a nineteen-dollar bill?

A. No, sir.

X Q. 681. I think you have testified that it took you about three-quarters of an hour to take out those coils at Meinhard's, didn't you?

A. I think I did.

X Q. 682. In 1878 and 1879 did you charge for repairing and other incidental plumbing work by the hour?

A. Yes, sir.

X Q. 683. How much did you charge per hour?

A. I think I charged a little less than I do now.

X Q. 684. What did you charge per hour in 1878 and 1879?

A. In 1879 I charged fifty cents.

X Q. 665. Fifty cents an hour for such work as you did at Meinhard's in removing the coils?

A. Yes, sir.

X Q. 686. As I understand your testimony, you did nothing at Meinhard's on that occasion but remove these coils and solder the connecting pipes?

A. I may have done some repairing besides.

X Q. 687. Do you remember doing any other repairing?

A. Yes, sir.

X Q. 688. What other repairing did you do at that time?

A. I repaired some hoppers and water-closets.

X Q. 689. And how long were you repairing the hoppers and water-closets?

800 A. It may have been a half a day and may have been less or more; I don't remember.

X Q. 690. You remember distinctly of fixing hoppers and water-closets at the time you removed these coils, do you?

A. Yes, sir.

X Q. 691. You furnished no pipe or other fittings for Meinhard at that time, did you?

A. I may have furnished a little fittings for repairs and such things.

X Q. 692. Do you remember furnishing any pipe for Meinhard at that time?

A. No, sir.

X Q. 693. You certainly didn't furnish any pipe in connection with this beer-drawing apparatus, did you?

—. No, sir; not that I know of.

X Q. 694. Did you look at Meinhard's book last night to see whether that payment was exactly eleven dollars?

A. Yes, sir.

X Q. 695. Now, suppose you render a bill for $11.13, you would be likely to discount that thirteen cents, wouldn't you?

A. Sometimes we do and sometimes we do not.

X Q. 696. Do you remember doing any work for Mr. Meinhard or Gilbert & Meinhard at any time that amounted to $11.13?

A. No, sir.

X Q. 697. Don't think you ever did?

A. No, sir; not $11.13. I know the bill was eleven dollars.

X Q. 698. You don't think you ever did any work for Gilbert & Meinhard amounting exactly to $11.13?

A. I done work for the amount of the bill, whatever the amount was there—$11.00.

X Q. 699. You said you couldn't find any bill for that eleven dollars, didn't you?

A. Of course he has an account of all moneys paid out.

X Q. 700. Did you ever do work for Gilbert & Meinhard that amounted to exactly $11.13?

A. It may have amounted to more or a little less, but he has got it down eleven dollars.

X Q. 701. Do you remember ever having done a job for Meinhard that amounted to $11.13?

A. I may have.

801 X Q. 702. Is that the best answer you can give to that?

A. Yes, sir.

X Q. 703. How far was the bottom of the upper ice box from the floor of the saloon at Meinhard's?

A. I didn't measure it.

X Q. 704. About how far was it from the saloon floor to the bottom of the upper ice box?

A. I suppose about two feet probably, and probably less or a little more.

X Q. 705. You can't say whether it was less or more than two feet?

A. No, sir; I think it averaged about two feet.

X Q. 706. You judge that because others average about two feet, is that it?

A. Yes, sir.

X Q. 707. Did you fit up Meinhard's Germania hall—that is, do the furnishing and gas-fitting work in connection with it?

A. I done some gas-fitting work at Germania hall.

X Q. 708. And haven't you been doing work constantly for Mr. Meinhard since 1878?

A. Yes, sir.

X Q. 709. If you could find that old book you are certain it would contain the charge for removing these coils, are you?

A. I am certain that work was done at that time.

X Q. 710. I didn't ask you that. I asked if you found that old book would you find contained therein a charge for removing these coils?

A. I suppose the items would be in there.

X Q. 711. There would be one item, I suppose, removing coils, so much time, wouldn't there?

A. I think there would.

X Q. 712. That is the way you usually make your entries, isn't it?

A. Yes, sir.

X Q. 713. Did you do any work for Gilbert & Meinhard before removing these coils?

A. No, sir.

X Q. 714. That was the very first job you did for them, was it?

A. Yes, sir.

X Q. 715. And that you swear to positively?

A. Yes, sir.

802 X Q. 716. And you also swear positively that you commenced keeping this book which you have here in 1879, do you?

A. Yes, sir; I think it was in *in* 1879.

X Q. 717. Do you swear positively to that fact?

A. No, sir; I couldn't positively.

X Q. 718. Didn't you commence it in 1880?

A. No, sir.

X Q. 719. Didn't you commence it in 1878?

A. I may; of course, there is items in there probably of 1878.

X Q. 720. But you think you didn't commence actually keeping the book until 1879?

A. I don't think so.

X Q. 721. You refer to Meinhard's account on page 72?

A. Yes, sir.

X Q. 722. What enables you to say that that work was done in 1879?

A. According to the following accounts that are on there, by looking back.

X Q. 723. There is no year written in connection with that account, is there?

A. No, sir.

X Q. 724. And isn't it a fact that the majority of the accounts contained in this book, are without years?

A. Some of them; yes, sir.

X Q. 725. You fix the year 1879 by other dates in your book, do you?

A. Yes, sir.

X Q. 726. What other entries?

A. Those before them; those that are charged before there on the book, page 156, taken on that page.

X Q. 727. How do the entries on page 156 enable you to say the charges on page 72 have reference to the year 1879?

A. Because some of them state there the year.

X Q. 728. Some on page 156 state the year?

A. Yes, sir.

X Q. 729. But how does that enable you to say the charges on page 72 were for work in 1879?

A. Because the work was done at different times.

803 X Q. 730. I asked you what there was on page 156 that enabled you to say that the charges on page 72 are for work done in 1879.

A. The various dates there tell.

X Q. 731. Refer to those various dates that fix the charges on page 72 as being for work in 1879.

A. I will have to look at the book.

(Witness handed book.)

There is February 6, 1882, and March 7th, and that is in 1881 (referring to page 156), and there is February 6, 1882, and March 7, 1881, and (referring to page 72) there is August, and that is 1880.

X Q. 732. What is 1880?

A. August the 12th.

X Q. 733. On page 72?

A. Yes, sir; and there is June 6th, and that is in 1880, and then here is 1879; September 24th and 25th is 1879.

X Q. 734. Do you find on page 72 any entry of the year 1879 or 1880?

A. No, sir.

X Q. 735. Do you find on page 156 any year noted so far as relates to Meinhard's account?

A. Yes, sir.

X Q. 736. What year do you find?

A. 1882.

X Q. 737. Where do you find 1882?

A. Here.

X Q. 738. In the second line of page 156?

A. Yes, sir.

X Q. 739. And following that don't you find the year 1883 noted?

A. Yes, sir.

X Q. 740. Do you find on page 156 or page 72 a year noted other than prior to 1882?

A. No, sir.

X Q. 741. Meinhard paid you this $11 October 29, 1878, you say?

A. Yes, sir.

X Q. 742. And the very first work you did for Meinhard of any kind was the removal of these coils?

A. Yes, sir.

X Q. 743. Now, having ascertained that Mr. Meinhard paid you eleven dollars on the 29th of October, 1878, when was it, would you say, that you removed these coils for him?

A. It may have been a month before he paid it and it may have been sooner.

804 X Q. 744. But it must have been within the range of a month, you think?

A. Yes, sir; probably a month or two less or probably more.

X Q. 745. How much more than a month?

A. The bill may not have been presented until two months after the work was done.

X Q. 746. You always sent your bills within two months, did you?

A. Sometimes sooner or later.

X Q. 747. How long in those years did you delay in sending your bills?

A. Generally every month.

X Q. 748. With the exception of this work which you did for Meinhard in the removal of the coils, does the book which you have produced contain charges for all the work you did for either Meinhard or Gilbert & Meinhard?

A. Yes, sir.

X Q. 749. So that the book which is lost would only show the work which you did for Gilbert & Meinhard in the removal of the coils?

A. Yes, sir; and whatever little jobs was with it, repairing.

X Q. 750. Let me call your attention to the account of John

Keener, page 11, and ask you to explain the entry, "October 6, 1878, credit to bill of labor and materials for Wills house, $4.94."

(Book shown witness).

A. That was for casing up a sink that was put in there.

X Q. 75–. Was that charge made in 1878?

A. Yes, sir.

X Q. 752 Let me ask you to turn to page 20 of this book, to the account of Messrs. Gilbert & Meinhard for $11.13, and explain that.

(Book again shown witness).

A. Well, that was done at the time the coolers were taken out. That was in with it.

805 X Q. 753. You had overlooked that account, hadn't you?

A. Yes, sir.

Complainant's counsel requested the notary to make a transcript of the account of Gilbert & Meinhard on page 20, and such transcript is here offered in evidence and marked "Complainant's Exhibit Cassebeer Account with Gilbert & Meinhard."

X Q. 754. You said, didn't you, that the removal of the coils was included in this account on page 20?

A. Yes, sir; it was in that.

X Q. 755. You swear positively to that, do you?

A. Yes, sir.

X Q. 756. Then, of course, these entries on page 20 are for work done in 1878?

A. Yes, sir.

X Q. 757. And that you swear positively to?

A. Yes, sir.

X Q. 758. I read from this account, page 20, first item: "Thursday, May 16th, 8 three-eighths fittings, 64 cents; three nipples, 24 cents; 21 feet three-eighths pipe, $1.05; three-fourths day time, gas-fitters, fixing pipe, $3.37." Don't you find that that is the first work that you did for Meinhard & Gilbert, as shown by this account?

A. Yes, sir.

X Q. 759. Have those entries anything to do with the removal of the coils?

A. Yes, sir; the following entries after that.

X Q. 760. Have those entries anything to do with the removal of the coils?

A. Not what you read off just now.

X Q. 761. Then the fact is you did some work for Gilbert & Meinhard before you removed those coils, didn't you?

A. Yes, sir.

X Q. 762. Now, didn't you tell us repeatedly that the first work you ever did for Gilbert & Meinhard was the removal of these coils?

A. Yes, sir; and some other work besides.

806 X Q. 763. How do you harmonize the fact that your books convict you of that misstatement, in that it shows that

the first work which you did for Gilbert & Meinhard was not in the removal of the coils?

A. Because I thought that was the first work.

X Q. 764. And now you are positive it wasn't, aren't you.

A. Yes, sir.

X Q. 765. In keeping your books hasn't it been your practice when you have had a job which consisted of furnishing pipe to charge for that pipe and then for the time consumed in putting it in, etc.?

A. Not unless it is contract work, and then it is different.

X Q. 766. But if it is not contract work you do it in that way, do you?

A. Yes, sir.

X Q. 767. This wasn't contract work which you did for Gilbert & Meinhard, was it?

A. No, sir.

X Q. 768. Those four items under the head of May 16th have reference to one and the same job, haven't they?

A. Yes, sir.

X Q. 769. That is the furnishing of fittings, nipples, pipes, and three-fourths of a day's time, "gas-fitters fixing pipe"?

(Book shown witness.)

A. that is right.

X Q. 770. That job had reference to gas-fitting, hadn't it?

A. Yes, sir.

X Q. 771. I notice over the charge "8 $\frac{3}{8}$ fittings" the figure "8." To what does that refer?

(Book shown witness.)

A. I guess it is the price; yes, sir.

X Q. 772. Then those eight fittings cost eight cents apiece?

A. Yes, sir.

X Q. 773. Amounting to 64 cents?

A. Yes, sir.

X Q. 774. Then over the charge "21 feet three-eighths pipe" five.

A. That is five cents.

807 X Q. 775. Five cents a foot for 21 feet, amounting to $1.05?

A. Yes, sir.

X Q. 776. The next charge to Gilbert & Meinhard on page 20, September 6th, "14$\frac{3}{4}$ feet one-half-inch pipe," with figure 5 over it, "73 cents; time plumber fixing pipe (25), $1.25; to four fittings (8), 32 cents;" don't you so find it in the book?

A. Yes, sir.

X Q. 777. That, then, composed another job which was done on September 6, 1878, didn't it?

A. Yes, sir.

X Q. 778. The pipe cost 5 cents a foot, didn't it?

A. That is what is charged there.

X Q. 779. That must, then, have been ordinary half-inch iron gas pipe?

A. Yes, sir.

X Q. 780. You know that from the price that that kind of pipe brought at that time?

A. Yes, sir.

X Q. 781. The next item, "Time, plumbing, fixing pipe," over which is 25; to what does that 25 refer?

A. That means for half a day; that is about a quarter of a day time charged.

X Q. 782. Doesn't that mean five hours' time at 25 cents, amounting to $1.25?

A. No, sir.

X Q. 783. Didn't you charge 25 cents an hour for working in the year 1878?

A. No, sir.

X Q. 784. In 1879 didn't you charge 40 cents an hour?

A. Yes, sir; that depends on the men that worked at it.

X Q. 785. Wasn't that your charge for plumbing?

A. Sometimes; it depends on who it is.

X Q. 786. And in 1878 didn't you charge 25 cents an hour?

A. Not according to that bill there.

X Q. 787. According to what bill?

A. That bill of Meinhard's. Do you mean on page 20?

X Q. 788. Yes, sir; refer to that bill on page 20 and point out what it is that enables you to say that you didn't charge 25 cents an hour for work in 1878.

(Book shown witness.)

808 A. That 25 represents for half a day, $2.50, and there was a quarter of a day's time at that, $1.25.

X Q. 789. What does that 25 indicate?

A. It indicates for half a day. That is what it is supposed so be. I charge for a quarter of a day's time there.

X Q. 790. Why did you put the 25, which indicated half a day, if you charged only a quarter of a day?

A. That should be $2.50, for half a day.

X Q. 791. The 25 should be 2.50?

A. Yes, sir.

X Q. 792. How do you account for the fact that it is 25 and not 2.50?

A. Because that is the posting of it, I suppose.

X Q. 793. That 25 is in your handwriting, isn't it?

A. Yes, sir.

X Q. 794. You say, then, you only charge here for a quarter of a day?

A. Yes, sir.

X Q. 795. Didn't you say that you charged in 1878 and 1879 for plumbing by the hour?

A. Yes, sir.

X Q. 796. How does it happen, then, that you have this charged for a quarter of a day and not by the hour?

A. A quarter of a day is two and one-half hours.

X Q. 797. How much per hour would that be?

A. 50 cents.

X Q. 798. You charged Meinhard 50 cents an hour, did you?

A. Yes, sir.

X Q. 799. And you charged him the same or more in 1879?

A. I can tell by looking on the book.

X Q. 800. Never mind the book; tell me from your recollection whether you charged Meinhard 50 cents an hour for work in 1879 or more or less than that.

A. I charged him 50 cents and sometimes 40 cents, according to what kind of work there was.

X Q. 801. Do you know whether this charge, "Time, plumbing, fixing pipe," was at 50 or 40 cents an hour?

A. 50.

X Q. 802. How do you know that?

A. According to that mark on top there.

X Q. 803. That "25"?

A. Yes, sir; that should represent 2.50.

809 X Q. 804. You remember after a lapse of ten years that that "25" should have been two and a half?

A. Yes, sir.

X Q. 805. You had some helpers in 1878, had you?

A. Yes, sir.

X Q. 806. How many helpers had you in 1878?

A. I had one.

X Q. 807. Did these helpers ever go out and do work for you when you didn't go?

A. No, sir; not at that time.

X Q. 808. If the helper went at all he always went with you?

A. Yes, sir.

X Q. 809. That item, "Time-plumbing, fixing pipe, $1.25," was for putting in that 14¾ feet one-half-*wide* pipe which you say was iron gas pipe?

A. Yes, sir; that may have been water pipe, half inch, or gas pipe.

X Q. 810. But that charge for the time was for the putting in of that pipe?

A. Yes, sir.

X Q. 811. The next item under the head of September 6th is, "To four fittings, 32 cents," with the small figure "8" over the word "fittings"?

A. Yes, sir.

X Q. 812. That is the price of those fittings?

A. Yes, sir.

X Q. 813. Eight cents apiece?

A. Yes, sir.

X Q. 814. And those four fittings was a part of that same job?

A. Let me see that book.

(Shown witness.)

A. Yes, sir.

X Q. 815. What kind of fittings were those that cost eight cents apiece in 1878?

A. Malleable-iron fittings.

X Q. 816. For what purpose?

A. To fit that sized pipe, the gas pipe.

X Q. 817. That one-half-inch gas pipe?

A. Yes, sir.

810 X Q. 818. Doesn't that charge of September 6th cover the second job which you did for Gilbert & Meinhard?

A. Yes, sir.

X Q. 819. And isn't it a fact that that charge of September 6th has no reference to the removal of these coils?

A. Yes, sir.

X Q. 820. Then it is also a fact, is it not, that you did two jobs at least for Gilbert & Meinhard before you removed the coils?

A. Yes, sir.

X Q. 821. Referring again to this account on page 20, this Gilbert & Meinhard account, don't you find the following: "September 7th, one basin cock, $1.50; 2 pounds solder and hooks, 78 cents; time plumber and helper fixing pipe, $1.25"?

A. Yes, sir.

X Q. 822. What was that one basin cock?

A. There was a new faucet over a wash-basin.

X Q. 823. And what was the two pounds of solder and hooks?

A. The solder was for the upper ice box and the basin cock.

X Q. 824. And wasn't that solder for the job of September the 6th, the day preceding?

A. No, sir.

X Q. 825. And what were those hooks for?

A. For hooking some pipes up in the hall, I suppose.

X Q. 826. Don't you know what they were for?

A. For hooking up pipes; common iron hooks.

X Q. 827. For hooking up common iron pipe?

A. Yes, sir.

X Q. 828. Gas pipe?

A. Yes, sir.

X Q. 829. And where did you put these hooks?

A. They must have been put in the hall.

X Q. 830. This cock you put in, did you?

A. Yes, sir.

X Q. 831. On September the 7th?

A. Yes, sir.

X Q. 832. And what was it for, did you say?

A. For the wash-basin.

X Q. 833. Did you take out the old one?

A. Yes, sir.

811 X Q. 834. And fitted things up generally and placed this new one in?

A. Yes, sir.

X Q. 835. Where was this wash-basin that you put the new cock to?

A. In the saloon part.

X Q. 836. In the saloon proper or in the garden?

A. Yes, sir; in the saloon, in the front part of the building.

X Q. 837. And did you at that time fix up the basin and do whatever was necessary in connection with this wash-basin?

A. Yes, sir.

X Q. 338. And wasn't the item "time plumber and helper fixing pipe" for putting in the cock and the hooks and doing what soldering was necessary?

A. The upper ice box and that was all together.

X Q. 839. What do you mean—the upper ice box?

A. The work on the coolers.

X Q. 840. The work on the coolers, you distinctly remember, was included in that item?

A. Yes, sir; and that soldering.

X Q. 841. You swear positively, do you, that the taking out of the coils and the solder used for soldering the connection were included in this item, September 7th, "Time plumber and helper fixing pipe, $1.25"?

A. Yes, sir.

X Q. 842. Do you remember having testified that you had no helper with you when you took out those coils?

A. Yes, sir.

X Q. 843. Then this item couldn't have been for that, could it?

A. Why not?

X Q. 844. Doesn't this item say "time plumber and helper fixing pipe"?

A. He may have come there to help on the basin cock.

X Q. 845. Didn't you tell me you didn't have a helper with you at that time?

A. Yes, sir; I did.

X Q. 846. Now, if that is true, then this item does not refer to taking out of those coils, does it?

A. Yes, sir; it does.

X Q. 847. Why does it?

A. Because I know it was done at that time.

812 X Q. 848. You know that in the face of your oath that a helper was not with you, and this item in the book says the helper was with you?

A. The helper may have brought some stuff there to me and took some back, or something.

X Q. 849. Do you remember having testified that the entry for the removal of those coils was in your other book?

A. Yes, sir.

X Q. 850. Do you also remember having testified that, if you could find that old book and the entry contained therein, you would find mention made of the removal of the coils?

A. I said there would be an itemized bill there.

X Q. 851. Didn't you say the entry would contain reference to the removal of these coils?

A. Yes, sir.

X Q. 852. Now this entry does not, does it?

A. No, sir.

X Q. 853. How long were you at Gilbert & Meinhard's on the 7th of September?

A. About a quarter of a day.

X Q. 854. How do you know that?

A. By the charge there.

X Q. 855. That was for a quarter of a day?

A. Yes, sir.

X Q. 856. You charged, then, by the day and not by the hour?

A. That was immaterial.

X Q. 857. How long did it take you to cut the pipes and remove the coils and solder and make the connections?

A. I should think it would take an hour. The basin cock didn't take long.

X Q. 858. Do you recall the fact of having testified on one occasion that it didn't take you more than three-quarters of an hour?

A. To cut them off, yes, sir.

X Q. 859. Do you remember having testified that it didn't take you more than three-quarters of an hour to remove those coils?

A. Yes, sir.

X Q. 860. Do you remember also of having testified on a
813 former occasion that you were at Meinhard's about three-quarters of a day?

A. At various times; yes, sir.

X Q. 861. I mean three-quarters of a day on the day when you removed these coils. Do you remember having so testified?

A. No, sir.

X Q. 862. Were you at Meinhard's three-quarters of a day on not on the 7th of September?

A. The book will show.

X Q. 863. Do you mean the account on page 20 of this book?

A. Yes, sir.

X Q. 864. What does that book show as to the length of time you were at Meinhard's on the 7th of September?

A. It shows I was there a quarter of a day.

X. Q. 865. Have you observed on this account that you have an item of 73 cents without noting what it was for?

(Book shown witness.)

A. The mistake was in adding up.

X Q. 866. Then the total of that bill, accurately footed, was $11.13?

A. Yes, sir.

X Q. 867. Is that the bill for which Mr. Meinhard paid you $11 on the 29th of October, 1878?

A. Yes, sir.

X Q. 868. Now if the removal of these coils is not included in

that account on page 20, then you didn't remove those coils, did you, until after September, 1879?

A. If it is not, but it is on that account.

X Q. 869. If it is not there, then is it not a fact that you didn't remove those coils until after September, 1879?

A. Do you mean to say if it is not on page 20?

X Q. 870. Yes.

A. Well, it was done in 1878, on September 7th, on page 20.

X Q. 871. You distinctly remember it was done on that day, do you?

A. Yes, sir.

X Q. 872. It is now recalled very distinctly to your recollection, is it?

814 A. Yes, sir; according to the soldering and material used there. I know what soldering was used and what the job was.

X Q. 873. The next charge in your books after September 7th is, according to your understanding of your books, September the 24th, 1879, isn't it?

A. Yes, sir.

X Q. 874. Now, again I ask you if the removal of those coils is not included in this account on page 20, then you didn't remove them until after the 24th day of September, 1879; is that so?

A. No, sir.

X Q. 875. Why not?

A. Because we removed them in 1878.

X Q. 876. I say if you didn't remove them in 1878?

A. Then it was done in 1879, of course.

X Q. 877. Isn't it a fact that you did no work for Meinhard from the 7th day of September, 1878, until the 24th day of September, 1879?

A. Yes, sir.

X Q. 878. Then if you didn't do it on the 7th day of September, 1878, you certainly didn't do it until after September 24, 1879; isn't that so?

A. Yes, sir.

X Q. 879. Did you have this book which you produced here this morning down to Mr. Meinhard's last night?

A. No, sir.

X Q. 880. Didn't take it down with you?

A. No, sir.

X Q. 881. You didn't know of this account on page 20, did you, until I called your attention to it?

A. No, sir.

X Q. 882. And when you made your affidavit in 1885, having testified that you had examined your books when you made that affidavit, you had reference to a book which is lost, had you not?

A. Yes, sir.

X Q. 883. And that book which is lost did contain the charges for the work which you did for Meinhard in the removal of these coils, did it not?

A. Yes, sir.

X Q. 884. Where did you get this information here which
815 is contained in your affidavit of December 17, 1885, "that in the spring or summer of 1878 I made some repairs on the beer-cooling apparatus used by Gilbert & Meinhard, in Falls Field, N. St. Paul street, this city"?

A. By thinking the matter over what I had been doing.

X Q. 885. Didn't you get that from the first book which is lost?

A. I may have and that may have been copied off from the first book.

X Q. 886. Do you think this account on page 20 was or was not copied off from the book that is lost?

A. I couldn't tell for sure.

X Q. 887. Don't you know that it wasn't copied off?

A. No, sir; there was some running accounts that were copied off from the other book.

X Q. 888. If this was the first work that you did for Gilbert & Meinhard, what reason was there for copying it off into this book?

A. Because the other book was full.

X Q. 889. So you are certain this account was copied off, are you?

A. No, sir; I am not.

X Q. 890. Do you say you haven't shown this book to Mr. Meinhard?

A. Yes, sir.

X Q. 891. He hasn't seen it?

A. No, sir.

X Q. 892. You didn't have it down to Meinhard's saloon last night?

A. No, sir.

X Q. 893. Did you take no books down there at all?

A. None at all.

X Q. 894. When you got down there did you tell Mr. Meinhard and Mr. Sullivan what this book showed?

A. No, sir.

X Q. 895. Didn't you mention the matter to them?

A. I looked at Meinhard's account, and that is all.

X Q. 896. Did you mention to either Mr. Meinhard or Mr. Sullivan anything about this book which you have produced here this morning?

A. No, sir; not in Meinhard's.

X Q. 897. What do you mean by not in Meinhard's?

A. I didn't have it at Germania hall.

816 X Q. 898. I ask whether you spoke to Mr. Sullivan or to Mr. Meinhard about what this book contained?

A. I spoke to Mr. Meinhard.

X Q. 899. Didn't you speak to Mr. Sullivan, too?

A. Yes, sir.

X Q. 900. Did you ever furnish Mr. Meinhard with any rubber hose?

A. No, sir.

X Q. 901. Never did?

A. Not to my recollection.

X Q. 902. Now, you distinctly remember, do you, that when you went to remove those coils, of seeing rubber pipe?

A. Yes, sir.

X Q. 903. How many rubber pipes were there?

A. Three.

X Q. 904. And in removing the coils and making the connections and soldering you didn't disturb or remove the rubber pipes, did you?

A. No, sir.

Complainant's counsel offers in evidence the account of Messrs. Gilbert & Meinhard, contained on page 20 of the book produced by the witness; also the account of Mr. Meinhard on pages 72 and 156 and 157 and 234 and 235 and 328, being Meinhard's entire account as counsel has been able to trace it on the books, bringing it down, as it does, to the 24th day of June, 1887, and asks the notary to mark those pages with his initials and to take possession of the book as an exhibit in this case.

X Q. 905. Have you done any work for Mr. Meinhard since the 24th day of June, 1887?

A. Whatever is in that book.

X Q. 906. Does Mr. Meinhard's account extend in this book beyond page 328?

(Book shown witness.)

A. That is the last charge, for putting up a boiler. I think that is the last.

817 In view of the statement by the witness that he is using this book in his daily business, it is stipulated that the notary shall make transcripts of the accounts offered in evidence and mark the same as an exhibit in the case, defendants' counsel becoming responsible for the production of the book itself at the argument of these causes.

By Mr. SULLIVAN, counsel for the defendants:

R. D. Q. 907. Do you find the account of Gilbert & Meinhard, on page 20, indexed under the name Gilbert & Meinhard or any other name?

A. I can tell by looking on the book. (Witness shown book.) Yes, sir.

R. D. Q. 908. Did you look for the name of Gilbert & Meinhard last night while searching for the account of Mr. Meinhard?

A. No, sir.

R. D. Q. 909. Is that the reason why you didn't find the account of Gilbert & Meinhard in this book?

A. Yes, sir.

R. D. Q. 910. For what name did you look last night in your book?

A. Mr. Meinhard.

R. D. Q. 911. What time did you reach home last night?

A. About a quarter to eight.

R. D. Q. 912. And did you examine this book before or after supper?

A. After supper.

R. D. Q. 913. Did I call at your house last night shortly after you examined this book?

A. Yes, sir.

R. D. Q. 914. About what hour was it?

A. It must have been in the neighborhood of nine o'clock.

R. D. Q. 915. Did I say to you where I was going?

A. Yes, sir.

R. D. Q. 916. Where to?

A. Down Clinton street.

R. D. Q. 917. Did I tell you why I went down Clinton street?

Objected to as immaterial, as the fact appears that Mr. Sul-
818 livan did go to the witness' house and inquired in reference to this book after encouraging the witness not to deliver the book last night into the hands of the notary.

A. On some business, I believe.

R. D. *R.* 918. And did I look over this book with you last night at your house?

A. Over Meinhard's account.

R. D. Q. 919. And after examining the account with you, what did I say to you about going to see Mr. Meinhard?

A. To see when the first account was paid.

R. D. Q. 920. And did you go to Mr. Meinhard's pursuant to my request?

A. Yes, sir.

R. D. Q. 921. Did I go with you?

A. No, sir.

R. D. Q. 922. And at your request did Mr. Meinhard look up his books and papers in reference to this matter?

A. Yes, sir.

R. D. Q. 923. And did he then and there find a book in which there appeared an entry in reference to this work which you did for him?

Objected to as leading and as already having been answered by the witness.

A. Yes, sir.

R. D. Q. 924. And did I also say to you that I would call at Mr. Meinhard's on my way back?

A. Thought you would stop in.

R. D. Q. 925. And I done so, did I not?

A. Yes, sir.

R. D. Q. 926. And met you and Mr. Meinhard?

A. Yes, sir.

R. D. Q. 927. In Mr. Meinhard's saloon?

A. Yes, sir.

R. D. Q. 928. And then did Mr. Meinhard show me the same book that he had shown you?

A. Yes, sir.

R. D. Q. 929. And what did I do with that book?

A. You took it along with you.

819 R. D. Q. 930. How long did I remain in Mr. Meinhard's?

A. About ten minutes.

R. D. Q. 931. And did we have anything to drink there?

A. Yes, sir.

R. D. Q. 932. What did we have to drink?

Objected to, as it is hardly possible that the court desires to know what they drank.

A. We each had a glass of wine.

R. D. Q. 933. Mr. Meinhard keeps a saloon, does he not?

A. Yes, sir.

R. D. Q. 934. And what did I say, if anything, to Mr. Meinhard about coming up here today?

A. You said you may require him.

R. D. Q. 935. And did Mr. Meinhard give any reasons why he didn't come up yesterday?

A. On account of his teeth.

R. D. Q. 936. Did you notice that his face was swollen yesterday?

A. Yes, sir.

Recross-examination by Mr. BENNETT, counsel for the complainants:

R. X Q. 937. Then are we to understand that Mr. Sullivan examined this book which you have produced here, at your house last night?

A. He examined Mr. Meinhard's account.

R. X Q. 938. He examined that book which you produced here this morning, didn't he?

A. Yes, sir.

R. X Q. 939. He examined it with you, didn't he?

A. Looked at it; yes, sir.

R. X Q. 940. You and Mr. Sullivan looked over Mr. Meinhard's account together, didn't you?

A. Yes, sir.

R. X Q. 941. Do you think it is possible that you could have testified this morning that you didn't examine that account at your house last night?

A. Yes; I could.

R. X Q. 942. You think it is possible you could have so testified?

A. Yes, sir; I could.

820 R. X Q. 943. No difference what you have testified to, the fact is that you did examine that account at your house last night?

A. Yes, sir; Mr. Meinhard's.

R. X Q. 944. Mr. Meinhard's account contained in this book which you have produced?

A. Yes, sir; all except page 20.

R. X Q. 945. That you didn't know anything about, did you?

A. No, sir.

R. X Q. 946. And that is what rather misled you?

A. Yes, sir.

R. X Q. 947. Mr. Sullivan came to your house especially to see this book, didn't he?

A. I couldn't tell that.

R. X Q. 948. Do you know of his coming for any other purpose?

A. He told me — had some business up on Clinton street, and that is all I know.

R. X Q. 949. Do you know of Mr. Sullivan coming to your house last night for any other purpose than to examine this book?

A. No.

R. X Q. 950. Is Mr. Sullivan in the habit of coming to your house?

A. No, sir.

R. X Q. 951. Did Mr. Sullivan tell you last evening, before you left here, that he would call at your house later in the evening?

A. I think he did.

R. X Q. 952. And didn't he tell you to go to your store and get this book and take it to your house?

A. I think he did.

R. X Q. 953. When you arrived at Meinhard's last night what was Meinhard doing?

A. He was standing around in the bar-room.

R. X Q. 954. Had they a concert last night?

A. Yes, sir.

R. X Q. 955. And he was looking generally after matters around there?

A. He was standing around in the bar-room.

R. X Q. 956. Was Mr. Sullivan there when you arrived?

A. No, sir.

821 R. X Q. 957. How long after you arrived did he come there?

A. About half an hour.

R. X Q. 958. You didn't see Mr. Meinhard in bed, did you?

A. No, sir.

R. X Q. 959. You didn't see that he was in any way physically affected, did you?

A. No, sir.

R. X Q. 960. He didn't appear to be sick?

A. Only his teeth, and swollen in the face.

R. X Q. 961. Had a slight tooth ache?

A. Swollen face.

Since defendants' counsel has pursued the extraordinary course of attempting to account for Mr. Meinhard's absence yesterday for cross-examination, he proposes to show by a letter sent to complainant's counsel, Mr. Selden, by defendants' counsel, Mr. Sullivan, that Mr. Meinhard caused a note to be written by his son to the effect

that he could not attend for cross-examination. As quoting the language of the note:

"Father cannot call to-day; sick abed; will call to-morrow if possible.

CHAS. MEINHARD."

And complainant's counsel spreads this of record for the further fact that it will give the court the opportunity of judging as to the character of the witness Meinhard for truth and veracity.

ADOLPH CASSEBEER.

STATE OF NEW YORK, } ss:
County of Monroe, }

On this 7th day of February, 1888, before me personally appeared the above-named Adolph Cassebeer and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

GEORGE F. SLOCUM,
Notary Public.

822 NOVEMBER 3, 1887—1.30 p. m.

Same parties present as before.

SCHAUB, ERNST, being sworn, doth depose and say, in answer to interrogatories proposed to him by JOSIAH SULLIVAN, the defendants' counsel—testified as follows:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is Ernst Schaub; my age is 47; residence, 72 Clifford street, Rochester; my occupation is gas-fitter and plumber.

Q. 2. How long have you resided in Rochester?

A. I came here on the 23d day of May, 1868.

Q. 3. Have you been working at your trade in the city since that time?

A. Yes, sir.

Q. 4. How long have you been carrying on business for yourself?

A. For the last twelve years.

Q. 5. Did you know Gilbert & Meinhard, who kept a saloon in Falls Field, in this city?

A. Yes, sir.

Q. 6. Did you at any time do work for them on a beer-cooling apparatus they had in their saloon?

A. Yes, sir; I did.

Q. 7. When was that?

A. That was in the year 1878—towards fall.

Q. 8. What work did you do on this apparatus?

A. Repairing work, at this time.

Q. 9. Please state the kind of repairs you made.

A. They broke two of the lower beer pipes off, which is connected to the beer kegs.

Q. 10. While making those repairs did you examine this apparatus?

A. I did.

Q. 11. What was this apparatus used for?

A. This apparatus was used for drawing and cooling beer.

Q. 12. Please describe this apparatus which you repaired on this occasion.

A. The apparatus was two ice boxes, one built on the upper floor, a small one, and a larger-sized one in the cellar. He had ice
823 in the upper box and some in the lower. The upper box had linings inside of zinc, and the lower box was only part lined—in the place where the ice was laying; from the upper to the lower box ran the beer pipes, which was connected to the beer kegs and up to the upper faucets in the upper box. The beer pipes went through three tin pipes, each one separate; from the tin pipes down to the lower ice box went the piece of rubber hose, which was shoved over the tin pipes and about six to eight inches in length into the lower box.

Q. 13. Were those rubber hose fastened to the tin pipes?

A. Yes, sir; just shoved over, air-tight, water-tight.

Q. 14. What was the length of those tin pipes?

A. The length was about 12 inches, I would say—10 to 12.

Q. 15. Did the tin pipes run into the upper ice box?

A. Yes, sir; about three to four inches above.

Q. 16. What became of the ice water in the upper ice box?

A. It run down to the lower one.

Q. 17. How?

A. It followed up the beer pipes and went on the beer kegs.

Q. 18. How did the water get out of the upper ice box?

A. It went through those tin pipes, and then into the rubber hose, and from there into the lower ice box—followed up the pipes, and partly on the side it went out.

Q. 19. What pipes do you mean?

A. The beer pipes.

Q. 20. What was the length of those rubber pipes which surrounded the beer pipes?

A. Three or four feet, from the upper ice box to the lower; I didn't take no measure of them; that was by guess.

Q. 21. What was the diameter of those beer-supply pipes?

A. Three-eighths.

Q. 22. What was the diameter of the tin pipes?

A. The tin pipes was an inch.

Q. 23. And what was the diameter of the rubber hose
824 which surrounded the tin pipes?

A. That was inch pipe, too; inch hose.

Q. 24. What was the length of the beer-supply pipes?

A. About 12 feet each, according to the way the keg was placed; it might have been 13 or 14 feet.

Q. 25. How were those beer-supply pipes fastened to the beer kegs in the cellar?

A. They were fastened on a brass coupling, soldered on it.

Q. 26. While repairing this apparatus on this occasion did you drink any beer drawn through this apparatus?

A. I did, because they treated me.

Q. 27. How did the beer taste?

A. Oh, the beer was good enough—fine.

Q. 28. Please look at this model, "Defendants' Exhibit Meinhard Apparatus," and state if you made it.

A. I did.

Q. 28. Does that model fairly represent the apparatus which you repaired for Mr. Meinhard on the occasion you have testified to?

A. Yes, sir; it does; in making that model I didn't make the whole model. I had a carpenter make the wood-work, because I am no wood-worker.

Q. 30. Did the carpenter make it under your instructions?

A. Yes, sir.

Q. 31. In the Meinhard apparatus could that portion of the rubber pipes in the cellar which surrounds the supply pipes be seen as plainly as it appears on that model?

A. Yes, sir; you could see them right there, except that that part was sticking down; that hole ought to be a little bit higher where the three supply pipes are into it; close up to the joist it was.

Q. 32. What was the depth of those joists?

A. I think they was 12 inches.

Q. 33. What part of those beer-supply pipes did you repair?

A. Two of them tin-lined pipes—the supply pipes.

Q. 34. What part of the pipes?

A. The lower part in the lower ice box.

825 Q. 35. Did you have a light with you?

A. Yes, sir.

Q. 36. Was there any other light in the lower ice box but the light which you had?

A. I didn't see none; I had a lamp or lantern.

Q. 37. Could a person see those rubber hose which you say surround the supply pipes without a light?

A. No, sir; it was dark in there, except you have the lamp so you can see.

Q. 38. Did you repair this apparatus more than once?

A. No, sir; only once; the second time I put it up in Germania hall.

Q. 39. Did you help take it out of Falls Field?

A. No, sir; I didn't.

Q. 40. What did you do with it at Germania hall?

A. After they had it moved down I put it up again in the basement.

Q. 41. What part did you put up?

Objected to, as the witness has already said that he put the apparatus up.

Q. 42. Did you put the whole of the apparatus up?

Objected to as grossly leading and improper, especially in view of the last objection.

A. Yes, sir; all what belongs to the working part and not the carpenter-work. That was done as I came there.

Q. 43. What part of this apparatus did you use in Germania hall?

Objected to as already answered by the witness.

A. I put up the supply pipes again and connected them and the faucets and put up the beer pump and guage.

Q. 44. How much of this apparatus did you see at Germania hall on this occasion?

826 Objected to, as the witness has repeatedly stated, although it is quite obvious that his answers do not satisfy examining counsel, that he put up the apparatus at Germania hall that was taken from Meinhard's at Falls Field.

A. I saw the whole stuff which he had before in use in Falls Field.

Q. 45 Did you see the tin pipes?

A. I did.

Q. 46. And did you also see the rubber hose?

A. I did.

Q. 47. I mean the rubber hose which surrounded the beer-supply pipe.

A. I did; seen the pieces of them; yes, sir.

Q. 48. How much of them did you see?

A. Two or three; I can't state exactly.

Q. 49. Did you use that rubber hose on the apparatus which you put up in Germania hall?

A. No, sir.

Q. 50. Did the apparatus which you put in Germania hall have any rubber hose around the beer-supply pipe?

A. No, sir.

Q. 51. This apparatus which you put in Germania hall, was it put up in the basement?

A. Yes, sir.

Q. 52. The saloon is in the basement of the building, is it not?

Objected to

A. Yes, sir.

Q. 54. Is there a cellar below this basement in Germania hall?

A. No, sir.

Q. 55. The basement is the cellar?

A. Yes, sir.

Q 55½. Whereabouts is the beer keg placed in this apparatus in Germania hall?

A. Right on the side behind the bar, in the ice box.

Q. 56. Do they draw the beer direct from the keg?

A. Yes, sir.

827 Q. 57. When you say that you put up the same apparatus in Germania hall that Mr. Meinhard used in Falls Field, what do you mean by that?

Objected to, as the witness has already repeatedly explained what he did do at Germania hall, and even going so far as to describe the parts used.

A. I used part of the old material of Mr. Meinhard's.

Q. 58. And have you described that portion of the material which you used?

A. Not here; no, sir.

Q. 59. Have you described that part of the material in the Meinhard apparatus which you used down at Germania hall?

A. Not yet.

Q. 60. "Not yet;" what do you mean by that?

A. Nobody asked me what part I used.

Q. 61. Then I will ask you to state what part of the old Meinhard apparatus did you use in the apparatus which you put up in Germania hall.

A. First I used the beer pump, the guage, the air pipes, the upper and lower faucets, and the beer pipes, what was good of them; which wasn't good I had to renew.

Q. 62. Then the apparatus which you put up in Germania hall didn't have an upper and lower ice box?

Objected to as leading.

A. No, sir.

Q. 63. Is Mr. Meinhard using this same apparatus yet in Germania hall?

A. I suppose he does. I didn't do any work for him no more for the last two years, about.

Q. 64. You are the same Ernst J. Schaub that testified in the case of Michael Magin against James D. McKay and Eugene Welker?

A. Yes, sir.

828 Cross-examination by Mr. BENNETT, counsel for the complainants:

X Q. 65. Upon how many occasions did you give testimony in the cases of Magin against Welker and McKay?

A. The last case they had here where Mr. Magin sued Mr. Welker and Mr. McKay.

X Q. 66. How many times did you give testimony?

A. This time?

X Q 67. No; the last time.

A. Do you mean to figure up the days?

X Q. 68. Were you called as a witness on more than one occasion?

A. I don't know what that means.

X Q. 69. How many times were you called as a witness in those old cases?

A. Anyhow, twenty times.

X Q. 70. About twenty times in those old cases?

A. Yes, sir.

X Q. 71. And on those twenty different occasions you gave testimony, didn't you?

A. Yes, sir; and some days they adjourned it again after I received a call and they let me go home again.

X Q. 72. Did you, when you were examined in those old cases, say anything about this Meinhard apparatus?

A. Yes, sir; I did.

X Q. 73. When you were examined as a witness in those old cases, did you testify about the Meinhard apparatus the same as you have to-day?

A. No, sir.

X Q. 74. Did you say anything about the Meinhard apparatus when you were examined before?

A. I said something, I think. It is a good many years ago, but I think I did.

X Q. 75. Do you know what you said about the Meinhard apparatus then?

A. There wasn't much said about it.

X Q. 76. You knew as much then about the Meinhard apparatus as you do now, didn't you?

A. Yes, sir; I did.

829 X Q. 77. Do you think your testimony about the Meinhard apparatus in the old cases was as extensive as your testimony to-day about the Meinhard apparatus?

A. What do you mean by the word extensive? I don't know. I ain't born in this country.

X Q. 78. When you testified in the old cases did you tell all you knew about the Meinhard apparatus?

A. Yes, sir.

X Q. 79. Do you remember also making an affidavit in those old cases?

A. "Affidavit"? What is that? Swore to it? Yes, sir.

X Q. 80. You remember swearing to a statement by Mr. Sullivan after you had been examined, don't you?

A. Yes, sir.

X Q. 81. Where did you make that affidavit or statement?

A. Here in this office.

X Q. 82. Who asked you to come here and make it?

A. Mr. Sullivan.

X Q. 83. And you made that statement then in Mr. Sullivan's office, did you?

A. Yes, sir.

X Q. 84. And before that time you had been examined as a witness in the cases, hadn't you?

A. Yes, sir.

X Q. 85. And told all you knew about the Meinhard apparatus?

A. I didn't tell all I knew about it because I wasn't asked for it.

X Q. 86. Did you say anything to Mr. Sullivan at that time about your knowing about the Meinhard apparatus?

A. No, sir.

X Q. 87. Did you tell anybody?

A. Yes, sir; I told some. I told Mr. Meinhard that I didn't want any more trouble, and it took so long that I was satisfied to get off.

X Q. 88. Then you didn't tell all you knew about the Meinhard apparatus at that time because you wanted to get off?

A. No, sir.

X Q. 89. You told enough, however, to let them know that you knew of this Meinhard apparatus, didn't you?

A. Yes, sir.

830 X Q. 90. Have you read a copy of your testimony recently?

A. Yes, sir.

X Q. 91. When did you read it?

A. I seen it here in the office after it was taken, and I read it here.

X Q. 92. Have you read this statement or affidavit which you made?

A. Yes, sir.

X Q. 93. When did you read that?

A. That was read after Mr. Sullivan took it where I had swore to it.

X Q. 94. Did you read it to-day?

A. No, sir.

X Q. 95. Yesterday?

A. No, sir. When was it? Last week, wasn't it? I think it was last week.

X Q. 96. Whereabouts did you read it?

A. Here in the office, as Mr. Sullivan ordered that model.

X Q. 97. Mr. Sullivan ordered that model, did he?

A. Yes, sir; he told me to make one as it was.

X Q. 98. You went away to make it?

A. Yes, sir.

X Q. 99. Nobody gave you any other instructions, did they?

A. No, sir.

X Q. 100. Did you have a drawing before you when you made the model?

A. No, sir; I didn't have no drawing, for I knew what it is.

X Q. 101. Didn't you have a drawing or photograph of Meinhard's apparatus when you made this model?

A. No, sir; I seen the photograph here. That was after, as he gave me the order.

X Q. 102. When Mr. Sullivan gave you the order you examined this photograph?

A. I looked at it.

X Q. 103. Is that the photograph which you saw?

A. Yes, sir; and another piece of paper.

(The photograph referred to is Defendants' Exhibit Meinhard Drawing.)

X Q. 104. Have you got that thin piece of paper here?
A. No, sir.
X Q. 105. What was on that other piece of paprr?
A. It was a pencil mark.
831 X Q. 106. A pencil mark of the apparatus?
A. Yes, sir.
X Q. 107. Showing how the pipes should be run and how the box should be?
A. No, sir.
X Q. 108. What did it show?
A. Just the three faucets up there and to the beer kegs to the ice box.
X Q. 109. It showed that part?
A. Yes, sir.
X Q. 110. And the rubber hose on?
A. No, sir; it didn't show nothing like that.
X Q. 111. Does this photograph show the rubber pipes?
A. No, sir.
X Q. 112. After looking at this photograph, Exhibit Meinhard Drawing, you went off and commenced building that model, did you?
A. No, sir. I seen the Meinhard apparatus before that and after I had seen it and not after the photograph.
X Q. 113. You saw this photograph after you got the order from Mr. Sullivan, didn't you?
A. Yes, sir; here in the office.
X Q. 114. Did you take this photograph with you?
A. No, sir.
X Q. 115. What did you do?
A. I went home and made a model.
X Q. 116. And made this model here before us?
A. Yes, sir.
X Q. 117. Did you talk with anybody about making that model?
A. No, sir; except the carpenter.
X Q. 118. You didn't talk with Mr. Meinhard about it?
A. I did, and told him that Mr. Sullivan told me to make a model of his.
X Q. 119. Did you ask Mr. Meinhard how it ought to be?
A. No, sir.
X Q. 120. Did you take this model to Mr. Meinhard's?
A. Yes, sir; I showed it to him.
X Q. 121. Why did you show it to Mr. Meinhard?
A. Because I lived down in that direction.
X Q. 122. Is that the only reason?
A. I am acquainted with Mr. Meinhard.
832 X Q. 123. Is that the only reason you took it to Mr. Meinhard's.
A. Yes, sir.

X Q. 124. How many times did you ever take it to Mr. Meinhard's?

A. Only once, as I took it here in the office.

X Q. 125. Only once, before you brought it to the office, do you mean?

A. Yes, sir.

X Q. 126. Who else did you show this model to before you brought it here?

A. Mr.—nobody else.

X Q. 127. Is that model in the exact condition that it was when you first showed it to Mr. Meinhard?

A. I guess it is. I don't see any difference in it; yes, sir.

X Q. 128. Did you make any changes in that model?

A. Changing it over since?

X Q. 129. Yes.

A. No, sir; I did not. I didn't have it since.

X Q. 130. Have you been paid for making that model?

A. No, sir.

X Q. 131. Have you put in beer drawing — cooling apparatuses of late, haven't you?

A. Yes, sir.

X Q. 132. How many have you put in here in the city?

A. About twelve or fourteen.

X Q. 133. When did you commence putting them in?

A. The first time I put them in was in the year 1876.

X Q. 134. Where was that?

A. For Mr. John Boehm.

X Q. 135. You testified about the Boehm apparatus when you were examined in the old cases, didn't you?

A. Yes, sir.

X Q. 136. When next did you put in a beer apparatus?

A. The next one I put in for Mr. Gerling; no, Gerling was first and then Boehm apparatus.

X Q. 137. When did you put one in after Boehm's?

A. For a man named John Rosch, on Front street.

X Q. 138. When was that?

A. That was a very short time, I think, after Boehm's.

833 X Q. 139. You know the Gordon apparatus, don't you?

A. I got acquainted with that later.

X Q. 140. When did you get acquainted with the Gordon apparatus?

A. As I helped Mr. Gordon on one of them.

X Q. 141. That is the first you knew of the Gordon apparatus, was it?

A. Yes, sir.

X Q. 142. When was that?

A. That was in the year 1880, I think.

X Q. 143. Since then haven't you put up apparatuses the same as Gordon's?

A. Yes, sir; same as Gordon's. I always put them up like that.

X Q. 144. How many Gordon apparatuses have you put up since you worked for Gordon on this one in 1880?

A. I haven't put them up in that way, and it is too expensive.

X Q. 145. How many beer drawing and cooling apparatuses have you put up since you saw Gordon's?

A. I put up about six or seven.

X Q. 146. On these apparatuses were the upper and lower ice boxes connected?

A. Yes, sir.

X Q. 147. And a cold-air passage between them?

A. Yes. sir.

X Q. 148. And the beer-supply pipes go through them?

A. Yes, sir; it is like the Boehm apparatus.

X Q. 149. Did I ask you anything about the Boehm apparatus just now?

A. You did before.

X Q. 150. For whom have you put up since 1880 these beer drawing and cooling apparatuses?

A. For Joe Hesslinger and two or three on Clinton street. I don't exactly remember the names, and one man's is Helfer, and Frank Foery, on St. Joseph street, and Fischer, on Conkey avenue.

X Q. 151. Did you put in an apparatus for Karle or Lehman?

A. Yes, sir; for John Karle, on the corner of Lowell and Galusha street-.

X Q. 152. You know Karle is one of the defendants here, don't you?

A. No, sir; that is another man.

834 X Q. 153. Are you a member of this association that is fighting the Gordon patent?

A. No, sir.

X Q. 154. Have you contributed any money towards fighting it?

A. No, sir.

X Q. 155. Do you mean to say you never have contributed any money to test the Gordon patent?

A. Treated any money?

X Q. 156. Have you never paid any money towards fighting the Gordon patent?

A. No, sir; never.

X Q. 157. Don't you know that it is claimed that the apparatuses which you put in infringed the Gordon patent?

A. I don't know such a thing. I have seen them in the old country.

X Q. 158. You never have been notified of that?

A. No, sir.

X Q. 159. You don't know that Mr. Magin claims that the apparatuses which you put in infringed his patent?

A. I know he claims it in the new time, later. Lately it was.

X Q. 160. Don't you remember having a talk with Mr. Magin just before you signed your testimony in the cases of Magin against Welker and McKay?

A. Yes, sir.

X Q. 195. You know what the truth is, don't you?
A. Yes, sir.
X Q. 196. And you know what a lie is?
A. Yes, sir.
X Q. 197. If you have told a lie about what took place——
A. Don't you be so insulting to a person; I never tell lies.
X Q. 198. If you have told a lies——
A. Don't insult a person, and I didn't come here to be insulted by any man.
X Q. 199. If you have told a lie about what took place there——
A. I won't be insulted by no man.

Defendants' counsel stated to the witness to answer the questions, and that if they are improper they would be objected to.

X Q. 200. Is the rest of your testimony of the same character?
A. You must use decent language to a man; I didn't tell a lie, not that I know of.
X Q. 201. You don't know whether you did or not?
A. I never told a lie to no man; no, sir.
X Q. 202. How long do you say you stayed at Magin's saloon on that occasion?
A. About three or four minutes.
X Q. 203. Was anybody else in the saloon besides Mr. Magin and Mr. Gordon?
A. Yes, sir; a good many others in there to drink beer;
838 it was in the forenoon; I had to go to Mr. Kohlmetz's machine shop.
X Q 204. It was in the morning, was it?
A. Yes, sir; in the forenoon, between 8 and 9 o'clock, I guess.
X Q. 205. Don't you know it was in the evening that you went there?
A. Then I don't recollect that.
X Q. 206. You don't recollect if it was in the evening?
A. No, sir; never have been there in the evening as I know of.
X Q. 207. You ought to know if you have been there, hadn't you?
A. Yes, sir.
X Q. 208. Do you swear you have never been in Magin's saloon in the evening?
A. No, sir; I wouldn't positively swear to that, because I know I went home from lodge, maybe, and it was late, and he was open, and went in and had a glass of beer, too. So I couldn't swear to any such thing.
X Q. 209. Didn't you say a moment ago that you never had been at Magin's in the evening?
A. I might be in the evening, too.
X Q. 210. Now, you think you might have been there in the evening?
A. Yes, sir.
X Q. 211. Do you know whether you did go there in the evening or not?
A. I wouldn't state for sure, because if I felt like drinking a glass

of beer some time in the night I don't remember whether I go to this place or some other; no, sir.

X Q. 212. The day you were at Magin's saloon and met Mr. Gordon there wasn't it just before you signed your testimony in the old cases?

A. Was it before or else after? I couldn't say.

X Q. 213. You can't tell whether it was before or after?

A. I can't tell for sure.

X Q. 214. Didn't you have some conversation with Mr. Gordon and Mr. Magin about what you had testified to?

A. No, sir.

839 X Q. 213. What did you say to Mr. Gordon and Mr. Magin?

A. I never spoke to them hardly; they are always speaking to me.

X Q. 216. They spoke to you when you went in the saloon that day; is that it?

A. I think so; yes, sir; Mr. Magin commenced talking about that.

X Q. 217. Didn't you tell Mr. Magin that it was too bad that he had tackled your customers?

A. No, sir; I never said such a thing.

X Q. 218. Didn't you tell Mr. Magin that you had testified because he had tackled your customers, but it wasn't yet too late to fix it?

A. No, sir.

X Q. 219. You never said anything of that kind before Mr. Gordon?

A. No, sir.

X Q. 220. Yet you went to the saloon on that day, didn't you?

A. Yes, sir; or I don't know if it was that day.

X Q. 221. It was about that time that you gave your testimony in the old cases, wasn't it?

A. Maybe it was in the time or after that, and I don't remember that exactly, but I say I have been there and had glass of beer, and maybe several times after since then again.

X Q. 222. Did you ever go to Magin's saloon more than once when you saw Mr. Gordon there?

A. No, sir.

X Q. 223. You never saw Gordon at Magin's but once?

A. No, sir; only once, and that is all I have seen him.

X Q. 224. Is this the only model you have made of Meinhard's apparatus?

A. Yes, sir.

X Q. 225. Never made another model?

A. No, sir.

X Q. 226. Before completing this model did you go and talk with Mr. Meinhard?

A. No, sir; I just told him I got to make that; that Mr. Sullivan instructed me to make such a model.

X Q. 227. You didn't show it to him?

A. After I had it complete and up here in the office; I showed it to him.

840 X Q. 228. You showed it to him here in the office?

A. I had a glass of beer at his place, and had it in a paper, and I told him I had the model, and to carry it to Mr. Sullivan, and "if you want to see it you can;" and he says, "Never mind. I can see it up there just as well, in the office."

X Q. 229. Did you show it to him at his saloon?

A. I slipped the paper off from the side and showed it to him.

X Q. 230. And what did you say about the model?

A. He would see it here in the office, and it was correct and exactly the way he had it, he said.

X Q. 231. He said that was correct?

A. Yes, sir.

X Q. 232. Then you brought it up here?

A. Yes, sir; except he stated that that hole ought to be higher up.

X Q. 233. He told you that the hole where the beer-supply pipe entered the lower ice box ought to be higher up?

A. This hole where the three tubes was running through and close to the joist.

X Q. 234. He told you that, did he?

A. Yes, sir; and I know it, too.

X Q. 235. Why didn't you make it so?

A. Because I didn't want to make dents in the rubber hose, and so I kept larger bends on it, and I didn't know that it made any effect on it.

X Q. 236. Do you know what has become of that other drawing that Mr. Sullivan showed you?

A. No, sir; I don't know.

X Q. 237. You examined that drawing before you went to make the model, didn't you?

A. I seen a drawing at the time the Boehm case was going on and saw the drawing all the time for the court.

X Q. 238. You told us on the fore part of your cross-examination that you saw this photograph here in Mr. Sullivan's office.

A. Often, of course.

X Q. 239. When he gave you the order to make this model; is that correct?

A. Yes, sir.

841 X Q. 240. You have also testified that he showed you another drawing on a piece of white paper; is that correct?

A. It was the very same thing as that; yes, sir. I don't know if it was the first one. Wasn't it?

X Q. 241. And after examining these two drawings you went and made that drawing?

A. No, sir; he didn't say nothing at this time about making a model. That was the week after he ordered me to make the model.

X Q. 242. It was a week after he ordered you to make the model?

A. It was two or three weeks ago or three weeks ago.

X Q. 243. Three weeks ago—what?

A. To make that model.

X Q. 244. He gave you the order three weeks ago?
A. Yes, sir.
X Q. 245. Did you come up here?
A. Yes, sir.
X Q. 246. Then you saw this photograph, didn't you?
A. I seen it there again.
X Q. 247. And then you went off and made this model?
A. I didn't take the photograph along.
X Q. 248. I didn't ask if you took it along.
A. I seen it; yes, sir.
X Q. 249. Then you went home and went to making this model?
A. Yes, sir.
X Q. 250. Who helped you make it?
A. A carpenter.
X Q. 251. What is his name?
A. Henry Merding. He make the wood-work.
X Q. 252. And this model correctly represents the Meinhard apparatus, does it?
A. Yes, sir.
X Q. 253. And you saw that apparatus on one occasion at Falls Field, did you?
A. Yes, sir.
X Q. 254. Only once?
A. Yes, sir.
X Q. 255. How long were you there on that occasion?
A. The upper part I seen several times.
X Q. 256. But not the lower part?
A. No, sir; not the lower ice box, and only worked once.
842 X Q. 257. How long did you work on that apparatus?
A. About an hour.
X Q. 258. Your work was in the lower ice box?
A. Yes, sir.
X Q. 259. And not in the upper ice box?
A. No, sir; in the lower ice box.
X Q. 260. Did you look into the upper ice box?
A. Yes, sir.
X Q. 261. Was that the first time you had ever seen that apparatus?
A. Yes, sir; the first time I examined it.
X Q. 262. When you looked into the upper ice box what did you see in there?
A. I seen them three tin pipes sticking out there where the supply pipes went down, because I was interesting to see every apparatus that I worked on.
X Q. 263. Was that all you saw in the ice box?
A. I saw as I made this model.
X Q. 264. I ask what you saw in the upper ice box.
A. In the upper ice box I seen from the top the ice laying on top and them three tin pipes sticking up.
X Q. 265. What did the ice lay on top of?
A. It went around those pipes.

X Q. 266. You mean there were coils of pipe in the box in the bottom, do you?

A. No, sir; straight down; went over and bent down to the lower ice box.

X Q. 267. And the beer-supply pipes were soldered onto the brass couplings?

A. Yes, sir.

X Q. 268. How were the beer-supply pipes connected in the upper ice box?

A. They went first through the tin pipes. They were connected with the three faucets sticking out there.

X Q. 269. The upper end of the beer-supply pipes were connected with the three faucets?

A. Yes, sir.

X Q. 270. And the lower ends of the beer-supply pipes were drawn onto the brass couplings?

A. Yes, sir.

X Q. 271. And these brass couplings went directly into the beer kegs, did they?

A. No, sir; coupled onto the brass cock or beer faucet.

843 X Q. 272. You repaired the pipe in the lower ice box, did you?

A. Yes, sir.

X Q. 273. How many pipes?

A. Two.

X Q. 274. How many beer-supply pipes were there in all?

A. Three.

X Q. 275. And two of those were broken?

A. Yes, sir.

X Q. 276. Where were they broken?

A. One right close to the couplings and the other about two feet above the beer keg.

X Q. 277. Were they broken entirely off?

A. One was and the other was just a flat dent that I had to cut through.

X Q. 278. How near the coupling was this break in the pipe?

A. Close to the coupling.

X Q. 279. So you had to unscrew the coupling from the beer keg, did you?

A. Yes, sir; from the faucet.

X Q. 280. Did you put on a new section of pipe or simply repair it?

A. No, sir; simply repair it.

X Q. 281. Solder it together?

A. Yes, sir.

X Q. 282. And then did you couple the beer-supply pipes fast to the faucet?

A. Yes, sir; and looked it over to see everything was in proper shape.

X Q. 283. What do you say was the size of these beer-supply pipes?

A. Three-eighths.
X Q. 284. And three of them?
A. Yes, sir.
X Q. 285. And all three of them coupled directly onto the faucet?
A. Yes, sir; all on each keg, one.
X Q. 286. Were the brass couplings connected with each keg?
A. Yes, sir.
X Q. 287. How were these couplings fastened onto the beer keg?
A. Screwed onto the beer cock.
X Q. 288. And how was the beer cock connected with the keg?
A. Driven into it.
X Q. 289. Then, if I understand you, there was a brass beer cock for each keg?
A. Yes, sir.
X Q. 290. And those brass beer cocks were driven into each keg?
A. Yes, sir; each one was driven into the beer keg.
844 X Q. 291. And the end of the beer-supply pipe had a brass coupling soldered on?
A. Yes, sir.
X Q. 292. And this brass coupling which was soldered onto the end of the beer-supply pipes was screwed onto the brass faucet in the beer keg?
A. Yes. sir.
X Q. 293. And that was so with each three of those kegs, was it?
A. Yes, sir.
X Q. 294. And you examined these specially?
A. Yes, sir.
X Q. 295. Can't be mistaken about that, can you?
A. No, sir.
X Q. 296. You are quite certain of that, as I understand it, because you mended one of the pipes near the brass coupling?
A. Yes, sir.
X Q. 297. Broken entirely off?
A. Yes, sir.
X Q. 298. Were those three beer kegs placed side by side in the lower cellar?
A. Yes, sir.
X Q. 299. Then the length of the beer-supply pipes must have differed for each keg?
A. Yes, sir; different lengths.
X Q. 300. But they were all connected in the same way by these brass couplings?
A. Yes, sir.
X Q. 301. How long did it take you to mend these two broken pipes?
A. About an hour.
X Q. 302. Had you any helper with you?
A. No, sir.
X Q. 303. All alone?
A. I left the helper; he was working on the Boehm apparatus at the time, and left him there.

X Q. 304. Did you hold your own lamp and do the soldering at the same time?

A. No, sir; the man done that.

X Q. 305. You had a man to do that?

A. Yes, sir.

X Q. 306. Who was that man?

A. They call him Felix; I don't know his other name.

X Q. 307. Was Mr. Meinhard there?

A. No, sir; Gilbert was upstairs.

845 X Q. 308. Did he go down with you?

A. No, sir; Felix brought the lamp.

X Q. 309. What was the appearance of those pipes that you repaired? Did they look new or old?

A. Old.

X Q. 310. As if they had been there for several years?

A. Yes, sir; looked old and patched in other places.

X Q. 311. You noticed they had been patched in other places?

A. Yes, sir; broken before.

X Q. 312. The beer-supply pipes had been broken before?

A. Yes, sir; according to the way I seen it and the way they were connected again.

X Q. 313. You could see where they had been soldered?

A. Yes, sir; could see it on the top in the upper ice box, I seen it. I opened the box.

X Q. 314. Did you notice that the beer-supply pipes in the lower cellar had also been mended in different places?

A. I think they was mended.

X Q. 315. You were not the first to mend those beer-supply pipes, then?

A. I don't know. I done work the first time for him, and I don't know whether he had anybody else to work on it before or not.

X Q. 316. It showed signs of having been mended before, didn't it?

A. Yes, sir.

X Q. 317. In mending those pipes did you have to unscrew the brass couplings?

A. Yes, sir.

X Q. 318. And do you remember uncoupling the pipes to the beer faucets?

A. Yes, sir; do that every time.

X Q. 319. After you got through mending the beer-supply pipes you coupled them on again to the beer faucets, did you?

A. I did.

X Q. 320. When was it that you repaired these pipes in Meinhard's lower ice box?

A. That was towards the fall of 1878.

X Q. 321. How do you know it was in 1878?

A. Because I worked on the Boehm apparatus at the same time.

846 X Q. 322. Is that the only way you know it?

A. Yes, sir; because he came there and got me there, and

never had done work for him before; and Felix came in and looked at the one I was putting there, and so he says, "If you please, can you come over there? There is a couple of pipes broken, and if you mend them we will pay you for them;" and so I went over right after dinner and mended them pipes.

X Q. 323. And he paid you, did he?

A. Mr. Gilbert paid me. He asked me how much it is and he paid me, and then he treated me.

X Q. 324. You were in business for yourself at the time?

A. Yes, sir.

X Q. 325. Did you make any charge in your book for it?

A. No, sir; it was cash.

X Q. 326. Did you never make cash entries in your books?

A. Sometimes, but not this one. Cash paid I don't, generally.

X Q. 327. When did you first work for Mr. Boehm?

A. That was in the year 1876, I think.

X Q. 328. And how long did you continue to work for Mr. Boehm?

A. I done only plumbing work for him when he had something to do.

X Q. 329. Whenever he had plumbing work to do you did his plumbing, did you?

A. Yes, sir; but not the whole of it.

X Q. 330. But you did some of it?

A. Yes, sir.

X Q. 331. And you continued to do that up to the time of his death, didn't you?

A. Yes, sir.

X Q. 332. When did he die?

A. He died five years ago, I think.

X Q. 333. Have you any memoranda of any kind by which you can fix the date when you did this repairing at Meinhard's?

A. No, sir. I didn't write it down.

X Q. 334. How do you know it wasn't the fall of 1879 that you did that?

A. Because I know when I put the Boehm apparatus in.

847 X Q. 335. You said you put the Boehm apparatus up in 1876, didn't you?

A. Yes, sir; and moved it over in 1878 again.

X Q. 336. And you kept working and doing plumbing for Mr. Boehm all along, didn't you?

A. Yes, sir.

X Q. 337. Then you depend upon your recollection for fixing the time when you made this apparatus at Meinhard's, don't you?

A. Because I worked on the very same day I worked at Boehm's, and that was when he got me.

X Q. 338. Can you refer to your books and fix the time you worked for Mr. Boehm?

A. I have got to look them over. I have got something of them left, I guess.

X Q. 339. Whenever you worked for Mr. Boehm you made an entry in your book, didn't you?

A. Yes, sir; but not for cash paid.

X Q. 340. He paid you cash sometimes?

A. Yes, sir; but that wouldn't be in the book, because I am more workingman than book-keeper.

X Q. 341. You were in business for yourself when you did this repairing?

A. Yes, sir.

X Q. 342. Did you examine Mr. Meinhard's beer apparatus before or after you repaired the pipes?

A. After I repaired the pipes to see that everything was all right.

X Q. 343. Anybody make the examination with you?

A. No, sir.

X Q. 344. All alone?

A. That fellow held the lamp, and then he was called up for something which I don't know, and then after I got done I looked them over because I was always interested in them.

X Q. 345. You looked over this apparatus after Mr. Felix had gone upstairs?

A. Yes, sir; he was upstairs as I came up.

X Q. 346. You saw the rubber hose, did you?

A. Yes, sir.

X Q. 347. Where did you see the rubber hose—at which side of the box?

A. Towards the left hand.

848 X Q. 348. And how far did these rubber pipes extend into the ice box?

A. Some of them six or eight inches, and went through the side of the box.

X Q. 349. And stuck out from six to eight inches?

A. Yes, sir; towards the inside.

X Q. 350. Do you see any other rubber pipe around there?

A. No, sir.

X Q. 351. No other rubber pipe around?

A. No, sir. I think on the ale barrel he had a piece of rubber. The ale tube, I think, was connected with a piece of rubber hose between, from the beer cock to the tin-lined pipe.

X Q. 352. How do you know it was the ale keg?

A. I know what an ale barrel is from a beer barrel.

X Q. 353. Then he had a piece of rubber hose connecting the pipe with the ale keg?

A. Yes, sir.

X Q. 354. But not with the beer keg?

A. No, sir; it wasn't on the beer keg.

X Q. 355. Then you saw no rubber hose connecting the beer-supply pipes with the beer keg?

A. No, sir; not at any time while I was there. It was close broke off to the couplings.

X Q. 356. Was it your understanding that the pipe broke in coupling the brass couplings?

A. Yes, sir; overturning it.

X Q. 357. He had three beer kegs and an ale keg, had he?

A. Yes, sir; I think so.

X Q. 358. And was there a separate pipe going from this ale keg?

A. No, sir; they were all alike—tin-lined pipe.

X Q. 359. Of the same size?

A. Yes, sir.

X Q. 360. And there were three kegs of beer and one keg of ale?

A. Tapped, you mean?

X Q. 361. Yes.

A. No, sir; only two beers was laying there, and one ale barrel was connected.

X Q. 362. And it was the two beer pipes that you mended?

A. Yes, sir.

X Q. 363. Then you saw no rubber hose around or in the
849 lower ice box except that surrounding the beer-supply pipes and the one connecting the ale pipes?

A. Yes, sir.

X Q. 364. Was there rubber pipes surrounding the ale pipe the same as the two beer pipes?

A. Yes, sir; all the same.

X Q. 365. And all projected out from 6 to 8 inches?

A. Yes, sir.

X Q. 366. How large do you say that rubber pipe was?

A. About an inch wide—inch hose.

X Q. 367. White or black hose?

A. Black, and looked dark.

X Q. 368. Your are satisfied it was an inch, are you?

A. Yes, sir.

X Q. 369. You measured it, didn't you?

A. No, sir; I didn't but by guess.

X Q. 370. Did you measure the size of the ice box?

A. No, sir.

X Q. 371. Did you make any measurements?

A. No, sir.

X Q. 372. You are satisfied, though, that this wasn't the ordinary sized rubber pipe, aren't you?

A. It waan't the ordinary size, and was larger.

X Q. 373. What was the ordinary size?

A. Three-fourths inch—half and three-fourths.

X Q. 374. Half and three-quarter are the ordinary sizes?

A. Yes, sir; and Boehm used that.

X Q. 375. Did Mr. Meinhard have a hydraut at his saloon—a street hydrant from the water works?

A. I don't know.

X Q. 376. What was the ordinary sized hydrant connection in 1878?

A. It is always three-quarter inch.

X Q. 377. That is the city regulation, isn't it?

A. No, sir; you could use inch hose; it depends on how big the supply tap was.

X Q. 378. The ordinary size was three-quarter inch?
A. The ordinary size now, half an inch.
X Q. 379. How was it in 1878?
A. According to the amount of water which you intend to use, and you have to make application for that.
850 X Q. 380. What was the ordinary size?
A. Any size whatever the board stated to you.
X Q. 381. What was the ordinary sized hose used for street sprinkling in 1878?
A. I have seen it up to an inch and a half.
X Q. 382. What was the ordinary size?
A. Three-quarter and an inch.
X Q. 383. Where did you ever see inch rubber hose used for street-sprinkling purposes in 1878?
A. At different places.
X Q. 384. Name places where you have seen it.
A. In Bartholomay's brewery we saw it; sprinklers were not in use so much then as nowadays.
X Q. 385. You were a plumber in 1878, and do you mean to say you don't know what was the ordinary sized sprinkling hose in that year?
A. Three-quarter and inch; of three-quarters I sold the most—on the inside.
X Q. 386. Did you keep rubber hose in those days?
A. No, sir; only when I had an order I would get it.
X Q. 387. Where would you get it?
A. At the factory.
X Q. 388. What factory would you get it from?
A. Depends on wherever the cheapest is.
X Q. 389. Where did you buy rubber hose in 1878?
A. I didn't buy any.
X Q. 390. You say there were no coils in the upper ice box?
A. I didn't see any.
X Q. 391. Did you have the ice taken out?
A. Yes, sir; there was very little in.
X Q. 392. Was the ice taken out for you?
A. No, sir.
X Q. 393. Had you any business that compelled you to look into the upper ice box?
A. Yes, sir; I wanted to see that everything was perfectly tight, because I worked on it.
X Q. 394. Didn't you go there simply to mend the pipes in the lower cellar?
A. Yes, sir.
X Q. 395. What business had you to look in the upper ice
851 box?
A. I was always interested in making the beer pumps and I looked in and nobody had objection to it.
X Q. 396. Was there any water in the bottom?
A. Yes, sir.
X Q. 397. How much?

A. From three to four inches high.

X Q. 398. And also some ice?

A. Yes, sir; and ice.

X Q. 399. Did you see any soda-water apparatus around the upper ice box?

A. No, sir.

X Q. 400. You didn't notice a soda-water pipe coming up from the fountain in the cellar?

A. No, sir; I didn't see any.

X Q. 401. You did no work about the upper ice box, did you?

A. No, sir; I didn't do no work in the upper ice box.

X Q. 402. Simply looked in?

A. Yes, sir; looked it over.

X Q. 403. Did you look in the closet underneath the ice box?

A. Yes, sir.

X Q. 404. You looked in there, and why did you look in there?

A. Because I wanted to see how it was made.

X Q. 405. Is that the only reason you looked in there?

A. Yes, sir.

X Q. 406. Did you ever look in there more than this one occasion?

A. No, sir; I didn't look in there more than once on that day.

X Q. 407. And you only looked once on that day that you worked there, in the upper ice box?

A. Yes, sir.

X Q. 408. And also in the lower ice box?

A. Yes, sir.

X Q. 409. So your knowledge of the Meinhard apparatus is confined to this one examination?

A. Yes, sir; that is true.

X Q. 410. What did you see in this closet underneath the upper ice box?

852 A. I seen them three rubber hose going down which was slipped over the tin pipes.

X Q. 411. How do you know it was slipped over the tin pipes?

A. Because I stuck my hand in to feel it.

X Q. 412. You got far enough in to feel it?

A. Yes, sir; that is only a short distance.

(Showing a distance of about a foot.)

A. It might be a foot or eight inches.

X Q. 413. The rubber hose, then, came down about eight inches from the front of the box, did it?

A. What do you mean?

X Q. 414. How far back from the front of the box?

A. About eight inches.

X Q. 415. And you put your hand in and examined it?

A. Yes, sir.

X Q. 416. Didn't you see some pails in there?

A. No, sir.

X Q. 417. Did you see a tub in there?

A. No, sir.

X Q. 418. You simply opened the door and put your hand in and examined it and went away?

A. Yes, sir; except I saw some package and some cheese, I think, probably, or something. It was in a wet cloth and a paper.

X Q. 419. Did they keep anything in that closet besides cheese?

A. I don't know what the rest of the paper was. There was another paper there.

X Q. 450. Did these papers lie on the floor or what?

A. On the shelf. There was a shelf a little above the floor.

X Q. 421. And on this shelf laid cheese?

A. Yes, sir; on the bottom of the ice box.

X Q. 422. How far was it from the floor to the bottom of the upper ice box?

A. About 14 or 16 inches. I didn't measure it.

853 X Q. 423. And you only saw it on this occasion?

A. Yes, sir.

X Q. 424. How many tin pipes were there?

A. Three.

X Q. 425. And how long were they?

A. About 14 inches.

X Q. 426. And how far did they extend up into the ice box?

A. About four inches or something like that.

X Q. 427. And how far down below the bottom of the ice box did they extend?

A. About six inches.

X Q. 428. How do you know they extended six inches?

A. As far as I could squeeze the rubber hose together.

X Q. 429. You squeezed the rubber hose to find out, did you?

A. Yes, sir.

X Q. 430. After you saw all this did you go into the cellar again?

A. Yes, sir; and got my tools up.

X Q. 831. Did you examine it again down there?

A. I took the lamp and saw how the box was built, and so on, because I was working on those apparatuses right along.

X Q. 432. Did you make any other examination except in the upper and lower ice box on this occasion?

A. No, sir.

X Q. 433. Your examination, then, was confined to looking at the upper and lower ice box?

A. Yes, sir.

X Q. 434. That being so, will you tell as how you knew the direction in which these pipes run so you could make this model?

A. Yes, sir.

X Q. 435. Tell us how, only having examined the upper and lower ice box, you knew the course these pipes took.

A. Yes, sir.

X Q. 436. Can't you tell us how you knew it?

A. Yes, sir.

X Q. 437. Tell us then.

A. The course, what you mean by that—the thickness?

854 X Q. 438. No; the direction that the pipes went.
A. Where it was bended down?
X Q. 439. How do you know that?
A. I seen it by the lamp.
X Q. 440. Inside or outside of the ice box?
A. Outside.
X Q. 441. Didn't you tell me a moment ago that your examination was confined to the inside of the ice box?
A. I didn't know what you meant by that. I told you I looked the whole thing over and I didn't know what you meant by that.
X Q. 442. Was this lower ice box opened all around?
A. No, sir; it was all closed, and a door so you could get into it.
X Q. 443. When you came out of the door could you get all around the ice box?
A. No, sir.
X Q. 444. Why not?
A. Because on that side was a picket fence.
X Q. 445. On which side?
(Pointing to the side marked with a B.)
A. There was lattice from the top to the bottom.
X Q. 446. Did you go inside of that picket fence?
A. No, sir; I couldn't.
X Q. 447. Did you notice a gas jet on the outside of the ice box?
A. Yes, sir; I noticed a gas pipe.
X Q. 448. Where was that gas pipe?
A. On top of the ceiling; I saw lots of them.
X Q. 449. Did you see a gas jet burning outside of the ice box?
A. I did not.
X Q. 450. Did you make any examination to find out whether there was any there?
A. No, sir; I didn't look that over because I had nothing to do with the gas and only to mend the two broken pipes.
X Q. 451. And yet you did examine the apparatus?
A. Yes, sir; that belongs to my work and I have got to.
X Q. 452. What had your work to do with the upper ice box?
855 A. Because sometimes the washers are loose and I carry stuff along in case something is out of order and have the tools there so as to do it.
X Q. 453. Didn't you say you went there to mend these two pipes in the lower ice box?
A. Yes, sir.
X Q. 454. What had the mending of those two pipes to do with the upper ice box?
A. I mended them and I could shake them off where the washers is between and the couplings on top, and I broke them off, and I have to look the apparatus over to see if everything is all right.
X Q. 445. You thought in screwing the pipe to make the connection you may have broken them in the upper ice box?
A. Yes, sir; I might.

X Q. 456. And that is the reason you looked in the upper ice box?

A. Yes, sir; and besides I wanted to see how it was made up there.

X Q. 457. Was it curiosity to see how the apparatus was, or was it to see if the apparatus was all right that you looked in the ice box?

A. It was to my interest, because I worked on those apparatuses.

X Q. 458. Before you went to Meinhard's to mend these pipes, did you know he had such an apparatus?

A. No, sir.

X Q. 459. That was the first you knew of it?

A. Yes, sir.

X Q. 460. Isn't there any other way in which you can fix the time besides the fact that you were working at Mr. Boehm's?

A. I don't know no other way.

X Q. 641. That is the only way you can fix the time?

A. Yes, sir; it was the time I worked for Boehm.

X Q. 462. You worked for Mr. Boehm a little every year, didn't you?

—. Yes, sir; but not on the beer apparatus.

X Q. 463. What did you work for him on?

A. On some other work; plumbing.

X Q. 464. Whatever plumbing he had you did?

A. Not the whole of it.

856 X Q. 465. But a part of it?

A. Yes, sir; a part of it.

X Q. 466. You say, I believe, that the length of the beer-supply pipes was from 12 to 14 feet, don't you?

A. Yes, sir; and maybe 14 to 16. I didn't take the measure of them.

X Q. 467. You didn't take the measure of anything, did you?

A. No, sir.

X Q. 468. You made no memoranda of anything which you saw, did you?

A. No, sir.

X Q. 469. Made no drawings of anything you saw?

A. No, sir.

X Q. 470. The beer-supply pipes may have been as long as 16 feet, you think?

A. Yes, sir.

X Q. 471. And how long do you say the rubber hose that surrounded the beer-supply pipe was?

A. Between three and four feet, each one.

X Q. 472. Did you measure them?

A. No, sir.

X Q. 473. Did you follow the direction that the pipes took?

A. Yes, sir.

X Q. 474. Did you measure the joist of the floor?

A. I didn't measure anything of the kind.

X Q. 475. Why do you say, then, it was about a foot thick?

A. By guess, because I am working in buildings right along.

X Q. 476. You guessed at that?

A. Yes, sir.

X Q. 477. As the beer-supply pipes entered the upper ice box what direction did they take?

A. They went up and was bended down and connected with the faucets.

X Q. 478. They went straight up?

A. Yes, sir; and bended down, and I suppose the ice bended them down and went to the faucets.

X Q. 479. How high up did they go above the bottom of the box?

A. About four or five inches.

X Q. 480. Then went straight out to the faucets?

A. No, sir; kind o' over that way and the ice was packed in.

857 X Q. 481. Did the pipes bend down and lay on the bottom?

A. Yes, sir; they was bended down in that way and then went up.

X Q. 482. Did the beer-supply pipes lay on the bottom of the ice box?

A. No, sir; I didn't stick my hand in the ice water; that was water.

X Q. 483. So you can't say exactly how the beer-supply pipes did go?

A. No, sir; but seen them bended over.

X Q. 484. But you saw them bent over?

A. Yes, sir.

X Q. 485. So you can't say exactly what was in the bottom of the ice box?

A. I seen water.

X Q. 486. But you didn't put your hand in?

A. No, sir; excepting I saw the three tubes that the ice water went in—the three tin pipes.

X Q. 487. How large were they?

A. About an inch.

X Q. 488. How far would they extend up from the bottom?

A. About four inches or three to four.

X Q. 489. How much above them did the beer-supply pipes extend?

A. Maybe two to three inches.

X Q. 490. And then it bent over some and went to the faucet?

A. Yes, sir.

X Q. 491. Were the faucets above or below the level of the upper end of the tin pipes?

A. Above the level.

X Q. 492. How much above the level of the upper end of the tin pipes?

A. About five or six inches.

X Q. 493. How much pipe would you say it took from the top of the tin pipe to the faucets?

A. I think it would take about 12 or 14 feet.

X Q. 494. That is, to go down into the cellar and all, you mean?

A. Yes, sir.

X Q. 495. From the top of the tin pipe, then, down into the cellar would take from 12 to 14 feet?

A. Yes, sir.

858 X Q. 496. What length of pipe did it take from the top of the tin pipes to the faucets in the upper ice box?

A. About 12 inches; 12 or 14 inches, and didn't take any more.

X Q. 497. Didn't take any more than 12 to 14 inches?

A. No, sir.

X Q. 498. And from the tin pipe down it took from 12 to 14 feet?

A. Yes, sir.

X Q. 499. And the rubber hose surrounded the beer-supply pipe where it left the bottom of the upper ice box until it entered the lower ice box, did it?

A. Yes, sir; commenced from the lower part of the tubes and into the ice box.

X Q. 500. The rubber tubes were shoved over the pipes in the bottom of the upper ice box?

A. Yes, sir; you could see them. It was the first time I seen that arrangement.

X Q. 501. It was the first and only time you ever saw that arrangement?

A. Yes, sir.

X Q. 502. And you remember seeing a little of the tin?

A. Yes, sir.

X Q. 503. And squeezing to see how far the tin extended down?

A. Yes, sir.

X Q. 504. And this model which you have built here you have built from your recollection of the apparatus as you saw it on that one occasion?

A. I did.

X Q. 505. The rubber hose slipped over the tin pipes, did they?

A. Yes, sir.

X Q. 506. How far down did they extend?

A. Into the lower ice box.

X Q. 507. About how many inches?

A. They went through the ice box about five or six inches, or eight, maybe; they were of different lengths.

X Q. 508. Was it five or six or eight?

A. I didn't measure none of them, but by guess I seen them at different lengths.

X Q. 509. You had a candle?

A. Yes, sir; a lantern.

859 X Q. 510. You didn't feel of the pipe, did you?

A. Yes, sir; I did.

X Q. 511. Felt the water coming out, didn't you?

A. Yes, sir; I felt of the lower pipes, where the water come out.

X Q. 512. You put your hand up and felt of it and the water came out?

A. Yes, sir; and because I worked on those beer pipes, and I had to bend them up or I couldn't solder on them.

X Q. 513. You remember that, too, do you?

A. Yes, sir; I do.

X Q. 514. The beer-supply pipes—how did they enter the lower ice box?

A. They came through the rubber hose.

X Q. 515. Did they all go through the one hole into the ice box?

A. Yes, sir.

X Q. 516. How large was that hole?

A. That hole was about four inches.

X Q. 517. Four inches square?

A. It wasn't square and was oval shape.

X Q. 518. Sort of circular?

A. Yes, sir.

X Q. 519. And about four inches in diameter?

A. Yes, sir; about four inches in length.

X Q. 520. Did the rubber hose about fill up the opening?

A. Yes, sir; pretty much.

X Q. 521. How far from the top of the ice box was this hole that the rubber pipe went through?

A. Right close to the top of the ice box.

X Q. 522. Was it a foot from the top?

A. Close to the top—right close to the joints underneath the joist.

X Q. 523. How high was the lower ice box?

A. About seven to eight feet.

X Q. 524. From the top to the bottom?

A. Yes, sir.

X Q. 525. There was seven to eight feet clear in the ice box?

A. Yes, sir.

860 X Q. 526. And this opening was just as near the top as it could be placed?

A. Yes, sir; close to the joist.

X Q. 527. And about four inches in diameter was the opening?

A. Yes, sir.

X Q. 528. Now, as the beer-supply pipes came out of the rubber hose did they go right down to the beer kegs?

A. Yes, sir.

X Q. 529. Direct?

A. Yes, sir; direct.

X Q. 530. From the appearance of this apparatus when you mended the pipes in the lower ice box, how long would you say it had been in use?

A. It had been in use, according to the slime I saw down there, anyway a couple of years, I should say.

X Q. 531. Then, in your opinion, that apparatus must have been in use at least a couple of years when you made these repairs?

A. Yes, sir.

X Q. 532. And that was your opinion after looking over the entire apparatus, was it?

A. Yes, sir.

X Q. 533. How do you know it was in the fall of the year when you mended this pipe?

A. Because I worked on the Boehm apparatus in the fall of the year.

X Q. 534. How do you know you worked on the Boehm apparatus in the fall of the year?

A. Because I know it.

X Q. 535. That is the only way you know it?

A. Yes, sir.

X Q. 536. You recollect it was in the fall?

A. Yes, sir.

X Q. 537. And recollect it was in 1878?

A. Because my child was burned by fire at this time, and so I know by that, and the doctor lived there, and from there I sent him over to the house, and the doctor was related to Mr. Boehm—Dr. Padiera.

X Q. 538. I think you have testified, haven't you, and is it not a fact, that you have only worked once upon that apparatus and your knowledge of that apparatus is confined to that one examination?

A. Yes, sir; that is all—in Falls Field.

861 X Q. 539. How far from the coupling was this second break that you repaired?

A. About three feet.

X Q. 540. About three feet above the beer keg?

A. Yes, sir; above the couplings.

X Q. 541. The coupling was directly on the beer keg, was it?

A. Yes, sir.

X Q. 542. Did you have to uncouple that pipe to mend it?

A. Yes, sir.

X Q. 543. And after you uncoupled and mended the beer-supply pipe did you again couple it to the beer faucet in the keg?

A. Yes, sir.

X Q. 544. Then did you go upstairs and see that the apparatus worked all right?

A. Yes, sir.

X Q. 545. And saw beer drawn?

A. Yes, sir.

X Q. 546. And drank some of that beer?

A. Yes, sir; I did.

X Q. 547. Did you make a special examination of the rubber hose?

A. I did.

X Q. 548. Saw what kind of hose it was and its size?

A. I did.

X Q. 549. Was the hose in good condition?

A. Yes, sir; so far as I could see.

X Q. 550. You didn't see any breaks?

A. I didn't go so exactly through them.

X Q. 551. Did the hose appear to be new hose?

A. The hose was good, because the water ran down through on the pipes.

X Q. 552. When you put your hand up to the rubber pipe did the water run out on your hands?

A. Yes, sir; partly, and partly along the pipe, and some of them was dripping down.

X Q. 553. Was there any place in the cellar to catch the water?

A. I suppose so; in the sewer.

X Q. 554. You didn't see any place, did you?

A. No, sir; I did not.

X Q. 555. Was the lower cellar in pretty clean condition?

A. Yes, sir; kept nice as a pin, the bottom of it.

862 X Q. 556. You didn't see any water or slime standing around on the bottom?

A. No, sir.

X Q. 557. Referring to this model, I notice sticking out of each keg a piece of brass. Does that represent the faucet?

A. Yes, sir.

X Q. 558. And the beer-supply pipes come down and attach into a piece of copper?

A. Yes, sir; couplings.

X Q. 559. Are those copper pieces which are soldered to the brass pieces representing the faucets intended to represent the couplings?

A. Yes, sir; the couplings and brass faucets.

X Q. 560. Then the couplings went directly to the brass faucets?

A. Yes, sir; screwed onto it.

X Q. 561. And the beer-supply pipes were soldered directly onto these couplings?

A. Yes, sir.

X Q. 562. Then this model represents the exact way in which the beer-supply pipes came down to and were attached to the brass faucets?

A. Yes, sir.

X Q. 563. What was the depth of the upper ice box?

A. From the top to the bottom?

X Q. 564. Yes.

A. About 4 feet or 3½ to 4 feet.

X Q. 565. And what was the length of it?

A. The length of it was about two feet and a half.

X Q. 566. And what was the width?

A. About two feet.

X Q. 567. Isn't it a fact that these tin pipes which you speak of were located very nearly the rear of the box?

A. It is in the middle the way it is there; in one row.

X Q. 568. Look at that model and state whether you are not mistaken in saying the tin pipes are in the middle?

A. By the middle I mean this way—towards the faucets.

X Q. 569. Does this model show the exact location of the tin pipes?

A. Yes, sir.

X Q. 570. Does this model also show the exact way in which the beer-supply pipes come through these tin pipes?

A. Yes, sir.

863 X Q. 571. And does this model show the bend in the beer-supply pipes after they left the tin pipe?

A. Yes, sir; it does. That is the way they are bended down (witness bending the beer-supply pipe in the upper ice box).

X Q. 572. As the model is at present does it show the bend in the beer supply pipes after they left the tin pipe?

A. Yes, sir.

X Q. 573. In this model you have bent the beer-supply pipes as you remember them, haven't you?

A. Yes, sir.

X Q. 574. The beer-supply pipes are not on the bottom of the upper ice box, are they?

A. I don't know. I didn't stick my hand in, and can't tell whether they was on the bottom or not.

X Q. 575. That is, speaking of Mr. Meinhard's apparatus as you examined it?

A. Yes, sir.

X Q. 576. In this model as you have bent the pipes do they touch the bottom or not?

A. They shouldn't touch the bottom. I know they was on top, on the ice water, some of them in different shape.

X Q. 577. And this model shows them as not being on the bottom, doesn't it?

A. Yes, sir.

X Q. 578. And that is right, as you remember it?

A. Yes, sir. I couldn't see whether they was on the bottom or not, because there was water in the box and I couldn't state.

X Q. 579. Were you subpœnaed to appear here as a witness?

A. Yes, sir.

X Q. 580. Have you got your subpœna with you?

A. No, sir.

X Q. 581. What did you with it?

A. I left it home, I think.

X Q. 582. Who gave you a subpœna?

A. Mr. Sullivan.

Complainant's counsel calls upon the defendants' counsel to state of record whether or not this witness has been subpœnaed to attend here.

864 Defendants' counsel — that he had not been subpœnaed, except he was requested to come.

X Q. 583. You are at the present time engaged in gas-fitting and plumbing business, are you?

A. Yes, sir.

X Q. 584. And have been for several years past engaged in repairing these beer-cooling apparatuses as you might be called upon?

A. Yes, sir; since I have been in the trade from a little boy up. I learned my trade and worked on beer apparatuses.

X Q. 585. During the last three or four years has it been your practice to do different repairing on beer-cooling apparatuses?

A. I do any kind of work.

X Q. 586. Have you done any in the way of mending beer-cooling apparatuses?

A. Yes, sir.

X Q. 587. That is part of your regular business, is it?

A. Yes, sir; in the course of a plumbing line it is part of the business.

X Q. 588. You know the construction of the Gordon apparatus, don't you?

A. I never had a chance to work in that only for him once.

X Q. 589. You worked for Gordon once?

A. Yes, sir.

X Q. 590. Helped him to put up an apparatus?

A. Yes, sir.

X Q. 591. Since then have you seen any of Gordon's apparatuses?

A. No, sir.

X Q. 592. Haven't you worked on any?

A. No, sir.

X Q. 593. How long did you work for Mr. Gordon?

A. About two days or two and one-half.

X Q. 594. Didn't you assist in putting in a Gordon apparatus into Mr. Farquhar's?

A. Yes, sir.

X Q. 595. And that was after you did this two or three days' work for Mr. Gordon, wasn't it?

A. That was at that time.

X Q. 596. That was the job, was it?

A. Yes, sir; that was the job.

865 It is admitted that all the evidence given by this witness in the former case of Magin *vs.* Welker and *vs.* McKay has already been made a part of the record in these cases by stipulation.

X Q. 597. You didn't remove this Meinhard apparatus from Falls Field, did you?

A. No, sir; I did not.

X Q. 598. Had nothing to do with its removal?

A. No, sir.

X Q. 599. And never saw it after you did the repairing of the pipe in the lower ice box?

A. No, sir.

X Q. 600. How do you know that this apparatus was taken to Germania hall?

A. Mr. Meinhard came to the store and gave me the order and told me he moved it over there to Germania hall.

X Q. 601. All you know is what Mr. Meinhard told you?

A. Yes, sir.

X Q. 602. And when you got to Germania hall he showed you certain old parts which he said had been removed from Falls Field?

A. Yes, sir.

X Q. 603. And that is all you know about it?

A. Yes, sir; "and there it is laying in the kitchen," he says, and use what is good and what isn't good to get new.

X Q. 604. You used what parts you could?

A. Yes, sir.

X Q. 605. You used part of the beer-supply pipes, did you?

A. Yes, sir.

X Q. 606. And didn't use the rubber hose?

A. No, sir; I took other rubber hose because I used little pieces, different little pieces for connections to the barrels, and used the air tubing and air pipes.

X Q. 607. Then you didn't use any of the old rubber hose at Germania hall?

A. No, sir.

X Q. 608. How many pieces of rubber hose did you see there at Germania hall when Mr. Meinhard told you there the stuff was?

A. Three of them.

866 X Q. 609. Was it all rolled up?

A. No, sir; all laying on the floor.

X Q. 610. These three pieces of rubber hose laying by themselves on the floor?

A. Yes, sir.

X Q. 611. You didn't know, did you, where those three pieces came from?

A. Came from the apparatus.

X Q. 612. How did you know that?

A. He told me there was the old stuff laying——

X Q. 613. And that was the only way you know?

A. Yes, sir.

X Q. 614. And you saw three pieces of rubber pipe?

A. Yes, sir.

X Q. 615. And no more?

A. No, sir.

X Q. 616. And no less?

A. No, sir; no less.

X Q. 617. Do you know who had taken the rubber hose off from the beer-supply pipes?

A. I don't know.

X Q. 618. They were off when you got there, weren't they?

A. Yes, sir; the whole stuff was laying on the floor.

X Q. 619. The beer-supply pipes by themselves and the rubber pipes by themselves?

A. All in a bunch.

X Q. 620. Somebody had taken the rubber pipe off the beer-supply pipes, hadn't they?

A. Yes, sir; and the whole stuff was laying on the floor in pieces and it must have been taken off by somebody; I didn't take them off.

X Q. 621. And you didn't have anything to do with taking them off?

A. No, sir.

X Q. 622. And didn't know of their being taken off?
A. No, sir.
X Q. 623. Only found them off when you got there?
A. Yes, sir.
X Q. 624. Was there anything peculiar about these three pieces of rubber pipe—anything that attracted your attention?
A. No, sir; nothing.
867 X Q. 625. It looked just like ordinary rubber pipe, did it?
A. Yes, sir; and I didn't think anything of it.
X Q. 626. And you wouldn't have known what use could have been made of those rubber pipe- had Mr. Meinhard not told you? Isn't that so?
A. I knew what he used it for, because it was piled in the apparatus, and it was slipped over yet of one piece of the tin-lined pipe.
X Q. 627. One piece was slipped over it yet, was it?
A. Yes, sir.
X Q. 628. You remember that distinctly, do you?
A. Yes, sir.
X Q. 629. Do you think you have already testified that the rubber pipe was taken off the tin-lined pipe when you got to Germania hall?
A. Yes, sir. The whole apparatus was laying on the floor, and the rubber pipes and the tin-lined pipe and the air pipes and everything else that belongs to it was laying on the floor in the kitchen as I came——
X Q. 630. What rubber pipe you used for the new apparatus you furnished?
A. Yes, sir; I did; short pieces about 12 inches in length.
X Q. 631. You didn't have an upper and lower ice box at Germania hall?
A. No, sir.
X Q. 632. An entirely different arrangement, was it?
A, Yes, sir.
X Q. 633. Was the copy of your affidavit which Mr. Sullivan gave you to read the other day in typewriting like this?
A. He didn't give it to me at all. He read it here as I came up, as he told me about the case going on.
X Q. 634. You didn't read it?
A. No, sir.
X Q. 635. Can you read?
A. Yes, sir; a little.
X Q. 636. Not very well?
A. Yes, sir; I can read pretty good, but, of course, German I can read the best.
X Q. 637. Mr. Sullivan read this affidavit to you, did he?
A. Yes, sir.
868 X Q. 638. And talked the matter with you?
A. Yes, sir; we were talking about it.
X Q. 639. Is this a copy of your affidavit?

(Paper shown witness.)

A. Yes, sir; it is.

Copy of affidavit referred to offered in evidence and marked Complainant's Exhibit Schaub Affidavit of December 23, 1885.

If necessary certified copy to be produced.

X Q. 640. You remember when you made that affidavit, do you?

A. Yes, sir.

X Q. 641. You came to Mr. Sullivan's office?

A. Yes, sir; and then went to another office after that. I don't know which office.

X Q. 642. Did Mr. Sullivan read the affidavit over to you then, when you came to his office?

A. Yes, sir; after he had it done.

X Q. 643. And after he had it fixed for you you signed it, did you?

A. Yes, sir; and he took me to a place where I had to swear to it.

ERNST SCHAUB.

STATE OF NEW YORK, } ss
County of Monroe, }

On this 4th day of February, 1888, before me personally appeared the above-named Ernst Schaub and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

GEORGE F. SLOCUM,
Notary Public.

869 The taking of the defendants' proof is further adjourned to November 9, 1887, at 10 o'clock a. m., at the same place. Complainant's counsel states that he is present and ready to attend to the taking of any further proofs on the part of the defendants between now and Saturday night.

STATE OF NEW YORK, }
County of Monroe. }

I, George F. Slocum, a notary public within and for the county of Monroe, State of New York, do hereby certify that the foregoing depositions of Albert Steif, John Meinhard, William Barr, Jr., Adolph Cassebeer, and Ernst Schub were taken on behalf of the defendants herein, in pursuance of the notices hereto annexed, before me at Nos. 15 and 16 Elwood building, in the city of Rochester, said county; that said witnesses were by me duly sworn before the commencement of taking their testimony; that the same was written partly by myself and partly by A. P. Little, Esq., stenographer, in my presence; that the opposing party, Michael Magin, was present by his counsel, George B. Selden, Esq., and John R. Bennett, Esq., during the taking of said testimony; that the taking of said testimony was commenced at the place aforesaid at 10 a. m. on the 6th day of October, A. D. 1887, was continued pursuant to adjournment as above set forth, and was concluded on the 9th day of November, A. D. 1887; that I am not connected by blood or marriage with

either of said parties nor interested directly or indirectly in the matter in controversy.

In testimony whereof I have hereunto set my hand and [L. S.] affixed my seal of office, at Rochester, in said county, this 11th day of February, A. D. 1888.

GEORGE F. SLOCUM,
Notary Public.

870 DEFENDANTS' EXHIBITS.

DEFENDANTS' EXHIBIT "A."

At a term of the United States court for the northern district of New York, held on the 24th day of February, 1886.

Present: Hon. Samuel Blatchford.

MICHAEL MAGIN *against* EUGENE WELKER. } In Equity. No. 3809. Decree.

This cause having been brought on to be heard upon the pleadings and proof, and after hearing George B. Selden on the part of the plaintiff and Josiah Sullivan on the part of the defendant, and a motion having been made herein on behalf of plaintiff for a rehearing and for an order that the proofs be opened and further testimony admitted, and the same having been denied on the merits and an order to that effect entered—

Now, on motion of Josiah Sullivan, defendant's solicitor, it is hereby ordered, adjudged, and decreed—

That the bill of complaint of the complainant herein be, and the same is hereby, dismissed upon the merits, and that the defendant, Eugene Welker, recover of the complainant, Michael Magin, his costs, to be taxed by the clerk of this court, and have execution therefor.

SAMUEL BLATCHFORD.

Dated February 24th, 1886.

A true copy from the record.
Attest: W. S. DOOLITTLE, *Clerk.*

Copy Defendants' Exhibit "A."

G. F. SLOCUM, *Sp'l Ex.*

Oct. 16, 1887.

871 DEFENDANTS' EXHIBIT "B."

At a term of the United States circuit court for the northern district of New York, held on the 24th day of February, 1886.

Present: Hon. Samuel Blatchford.

MICHAEL MAGIN *against* JAMES D. MCKAY. } In Equity. No. 3771. Decree.

This cause having been brought on to be heard upon the pleadings and proofs, and after hearing George B. Selden on the part of the plaintiff and Josiah Sullivan on the part of the defendant, and a motion having been made herein on behalf of plaintiff for a rehearing and for an order that the proofs be opened and further testimony admitted, and the same having been denied on the merits and an order to that effect entered—

Now, on motion of Josiah Sullivan, defendant's solicitor, it is hereby ordered, adjudged, and decreed—

That the bill of complainant herein be, and the same is hereby, dismissed upon the merits, and that the defendant, James D. McKay, recover of the complainant, Michael Magin, his costs, to be taxed by the clerk of this court, and have execution therefor.

SAMUEL BLATCHFORD.

Dated February 24th, 1886.

A true copy from the record.
Attest: W. S. DOOLITTLE, *Clerk.*

Copy Defendants' Exhibit "B."
Oct. 6, 1887.

G. F. SLOCUM, *Special Ex.*

872 DEFENDANTS' EXHIBIT "C."

Circuit Court of the United States for the Northern District of New York.

MICHAEL MAGIN *against* JAMES D. MCKAY. } No. 3771.

MICHAEL MAGIN *against* EUGENE WELKER. } No. 3809.

BLATCHFORD, *J.*:

These suits are brought on letters patent No. 248,646, granted to Charles Gordon Oct. 25th, 1881, for "an improvement in apparatus for cooling and drawing beer." The specification says: "My invention relates to an improved apparatus having for its
873 object the keeping of beer, ale, or other liquid at a low temperature during the operation of drawing the same for consumption, and it consists in surrounding the supply pipe through which the beer is delivered to the faucet with a cold-air passage for the purpose of maintaining a low temperature in the liquid in the supply pipe. My invention also consists in surrounding the cold-air passage and the faucet with a non-conducting jacket, and in the com-

bination with the ice box and the lower chamber for storing the beer of the supply pipe and the cold-air passage communicating between the ice box and chamber, as hereinafter more fully set forth. A keg of the liquid is placed in a chamber in the cellar. A supply pipe leads upward from it to the faucet from which the liquid is drawn for consumption. An outer pipe surrounds the supply pipe, leaving an air space around it its whole length from the lower chamber to an upper ice box, through which the supply pipe passes and with which the outer pipe is connected. As many supply pipes as are used may pass through the air space. A non-conducting jacket surrounds the outer pipe. The air, cooled by the ice in the ice box and the water produced by the melting of the ice, flows down to the air space and reduces the temperature of the liquid in the supply pipe. An air-forcing apparatus connected with the keg forces up the liquid. A pipe packed with non-conducting substance surrounds the faucet. There are four claims: First, the combination of the ice box, supply pipe, faucet, and cold-air passage surrounding the supply pipe; second, the combination of the ice box, of the supply pipe, and faucet, the latter having its jacket; third, the combination of the ice box, supply pipe, and faucet, of the cold-air passage, and the non-conducting jacket of the latter; fourth, the combination of the ice box, supply pipe, faucet, lower chamber, and cold-air passage communicating between the ice box and lower chamber."

In the McKay suit infringement is alleged of claims one 874 and four, in the W*le*ker suit of claims one, three, and four. Gordon made his invention in June, 1879. So far as claims one and four are concerned, the invention was anticipated by an apparatus invented and put in use by one Meinhard in Rochester, N. Y., in the summer of 1877, and which was continued in use about four years. That apparatus had the upper ice box, the supply —, the faucet, the lower chamber, and the cold-air passage surrounding the supply pipe and communicating between the ice box and lower chamber. It had three faucets, each with a supply pipe. Each supply pipe led separately to a barrel in the lower chamber, and each was surrounded by a cold-air passage created as to its upper part by a surrounding tin pipe and as to its lower part by a rubber hose which embraced closely the lower end of the tin pipe. The water of the melted ice and the cold air flowed down around the supply pipe into the lower chamber. The lower ends of the three pieces of rubber hose went into the lower chamber through a common opening, and it was not tightly closed around them, but the apparatus was a practical and successful one and embodied the same principle as that of Gordon. It may have been inferior in degree. utility, and perfection, but the invention was there, and the apparatus continued for nearly two years after Gordon obtained his patent. It did not contain the non-conducting jacket surrounding the outer wall of the cold-air passage, which is a feature in claim 3 of patent, but there was no patentable invention in adding a non-conducting jacket to the elements found in claim 1 or to those found in claim 4. The jacket is merely a space filled with non-conduct-

ing material to prevent the absorption of heat by the air in the cold-air passage. It was common knowledge, and not invention, to add this to what Meinhard had.

The bills are dismissed, with costs.

George B. Selden, for the plaintiff.
Josiah Sullivan, for the defendants.

Copy Defendant's Exhibit "C."
Oct. 6, 1887.

G. F. SLOCUM,
Special Ex.

875 DEFENDANTS' EXHIBIT "D."

Circuit Court of the United States for the Northern District of New York.

MICHAEL MAGIN *against* EUGENE WELKER. } No. 3809.

MICHAEL MAGIN *against* JAMES D. McKAY. } No. 3771.

BLATCHFORD, *J.:*

Under the rules laid down and applied in Colgate *vs.* Western Union Telegraph Co. (22 Blatchford C. C. R., 118), in Hicks *vs.* Otto (*id.*, 122), and in Spill *vs.* Celluloid M'f'g Co. (*id.*, 459) and the authorities referred to in the last-named case, it must be held that the plaintiff has not shown that he could not, with reasonable diligence, have obtained prior to the former hearing such of the testimony now sought to be adduced as is material to the question involved. The prayer of the petitioner for a rehearing is therefore denied.

John R. Bennett and George B. Selden, for the plaintiff.
Josiah Sullivan, for the defendants.

Copy Defendants' Exhibit "B."
October 6, 1887.

G. F. SLOCUM,
Special Ex.

876 UNITED STATES OF AMERICA, } ss:
Circuit Court Clerk's Office, Northern District of New York,

I, William S. Doolittle, clerk of said court, do hereby certify that I have compared the annexed copy of decision, Michael Magin *v.* J. D. McKay, Same *vs.* E. Welker, equity, Nos. 3771 and 3809, and the endorsements thereupon, with the original now on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

In testimony whereof I have caused the seal of the said court to be affixed, at the city of Utica, in said district, the 13th day of February, 1886.

W. S. DOOLITTLE, *Clerk.*

877 COPY OF DEFENDANTS' EXHIBIT MEINHARD TESTIMONY, OCT. 26, 1887. G. F. Slocum, Sp'l Ex'r.

Circuit Court of the United States, Northern District of New York.
In Equity.

MICHAEL MAGIN
vs.
JAMES D. MCKAY.

MICHAEL MAGIN
vs.
EUGENE WELKER.

MICHAEL MAGIN
vs.
CAMILLE FOREST.

Depositions of witnessess examined on behalf of the above-named defendants, pursuant to the stipulation and notice hereto annexed, at the office of C. D. Kiehel, No. 37 Powers building, Rochester, New York, on Wednesday, December 20th, 1882, at 10 a. m.

Present: George B. Selden, Esq., appeared on behalf of the above-named plaintiff and Josiah Sullivan, Esq., appeared on behalf of the above-named defendants.

JOHN MEINHARD, being duly sworn, doth depose and say in answer to interrogatories proposed to him by his counsel, JOSIAH SULLIVAN, Esq., as follows, to wit:

Q. 1. What is your name, age, residence, and occupation?

A. My name is John Meinhard; my age 51 years; residence, 75 North St. Paul St., Rochester, N. Y., and occupation is, I keep a saloon and concert hall.

878 Q. 2. How long have you carried on the saloon and concert hall now occupied by you?

A. Since July, 1876.

Q. 3. Do you look after the business yourself and have full charge of it?

A. Yes, sir.

Q. 4. Did you at any time—and, if so, you may state when—place in your saloon an apparatus for drawing and cooling beer?

A. I did have one put in in the summer of 1877.

Q. 5. Who put it in for you?

A. Mr. Neuhardt; don't know his first name; there is father and son. The son's name is Emil; I think the father's name is Michael.

I don't know which did the business and had charge of it. They were both there at the time.

Q. 6. Which of them did you pay for this apparatus?

A. I think I paid it to the old man. I got a bill; if I had that with me it would show.

Q. 7. How long did you continue using this apparatus?

A. About four years.

Q. 8. For what purpose was this apparatus used in your saloon?

A. It was used to draw the beer from the large ice-house in the cellar and especially to keep it always cool in summer.

Q. 9. Will you please describe this apparatus—that is, the construction of it—how it was used and how worked?

A. There is a small ice box in the bar-room with three faucets. These three faucets are connected with lead pipes with the ice box in the cellar. Those lead pipes are surrounded by small tin pipes in the bottom of the upper ice box and afterwards by rubber hose reaching down to the ice-house in the cellar so as to allow the ice water of the upper box to flow down around the lead pipes to the ice-house in the cellar. The upper ice box is about 2 feet by 2 feet by 2½ feet thick. The lower ice-house or box is about 8 feet
879 by 8 feet by 12 feet. The upper, smaller ice box is of a double wood, filled in with charcoal and lined with zinc. The ice-house in the cellar is of double wood and filled with sawdust.

Q. 10. Is the upper and lower ice box constructed with doors? And, if so, you state how many doors in each box.

A. The upper ice box has a cover on top and the ice-house in the cellar has got one large door of double wood and filled in with sawdust like the sides of it.

Q. 11. Are those doors always kept closed except when you have occasion to place something in the ice box?

A. Yes, sir; they are.

Q. 12. And when closed are those ice boxes air-tight?

A. They are intended to be to, but I guess they never are—that is, in general they are never exactly so. They could scarcely be made so.

Q. 13. Are they as close and air-tight as boxes are constructed in the manner we have described?

A. They were so along as we used them.

Q. 14. Were you in the habit of keeping ice in the upper ice box and also in the lower ice box when required to keep the beer in proper condition for selling?

A. Yes, sir.

Q. 15. When the ice in the upper ice box melted what became of the water? And if carried away by pipes or other means you may please state it and describe the manner in which it was carried away.

A. It went through the small tin pipes and hose to the upper—to the ice-ho-se in the cellar, except where the pipes were stopped up, and we had to take it out on the top of the ice box.

Q. 16. What was the cause of those pipes being stopped up when you say you took the water out of the upper ice box?

A. It was because the ice sometimes ain't quite pure.

Q. 17. Do you mean to be understood by that that when some dirt or refuse stopped up the pipes, which prevented the water
880 from flowing through, that you had to take it out of the box by hand?

A. Yes, sir.

Q. 18. Did this happen more than once during the time you used this apparatus?

A. I can't say how often it happened, but I am pretty sure that it happened more than once.

Q. 19. How many times should you say?

A. I could scarcely say how often; it is too long since we've used it.

Q. 20. Did those pipes which surrounded the lead pipe through which the beer ran make an air-tight passage from the upper ice box to the lower ice box?

A. I think not.

Q. 21. What was the size of the pipe through which the beer ran?

A. I don't know exactly; about one-half inch in diameter on the outside.

Q. 22. To what was the upper end of this beer pipe fastened?

A. To the faucets.

Q. 23. And to what was the lower end of it fastened?

A. The lower end was to be connected with the beer barrels by rubber hose with another faucet at the end of it.

Q. 24. Those were the barrels which contained the beer?

A. Yes, sir.

Q. 25. And there was a faucet with a rubber coupling attached to it placed in this barrel, which was connected with the pipe through which the beer ran?

A. Yes, sir.

Q. 26. What was the size of this outside pipe which surrounded the pipe through which the beer ran?

A. They were about an inch, I should think.

Q. 27. Did this outside pipe run into the upper ice box? And, if so, you may state how much of it.

A. It runs into the upper ice box, I should think, about four inches high.

Q. 28. And how far did it run into the lower ice box?

A. It just runs into the lower ice-house far enough to run the water into it.

Q. 29. Then, in the water passing out of the upper ice box
881 into the lower ice box, would it run through this outside pipe and over the inside pipe through which the beer ran?

A. Yes, sir.

Q. 30. Would the could air in the upper ice box also pass through the outside pipe and into the lower ice box if the air in the upper ice box was colder than that in the lower ice box?

A. I should think it would when there is no overflow of ice water.

Q. 31. When the ice water was flowing through this pipe would that prevent the cold air passing through it at the same time?

A. That is a question I am not quite sure about. If the pipe is not filled up with water there might be a chance for air to get through.

Q. 32. Then would the air pass from the upper ice box to the lower ice box when the space between the outside pipe and the inside pipe was not filled with water?

A. I think it would.

Q. 33. Would you please make a drawing of this apparatus put in your saloon by Mr. Neuhart which you used for the purpose of drawing beer?

A. I will.

(The witness here makes a drawing, which is marked "Defendants' Exhibit Meinhardt 'A,'" C. D. K., notary public.)

Q. 34. Please describe your drawing "Meinhard 'A.'"

A. The letter "*a*" shows the barrels in the ice-house in the cellar—they contain the beer; letter "*b*" shows the hose which is tied to the beer pipes and connected with faucets "*i*" to tap those kegs or barrels "*a*;" letter "*c*" shows the pipes connected with this hose "*b*" and faucets "*e*" in the bar-room running from hose "*b*" to the upper ice box and fastened to the faucets "*e*;" letter "*d*" is the tin pipes in the bottom of the upper ice box surrounding the beer pipes "*c*;" letter "*e*" is the faucets in the upper ice box; "*f*" shows the upper ice box and "*g*" the ice-house in the cellar; "*h*"
882 shows the India-rubber hose surrounding part of pipe "*c*" and fastened to tin pipes "*d*;" "*i*" shows the faucets to tap the barrels in the ice-house.

Q. 35. How did you force the beer out of kegs "*a*" into the bar-room upstairs?

A. By an air pump worked by water power.

Q. 36. Who placed the air pump there?

A. The first one was put in by Mr. Neuhardt; it was afterwards changed and one put in by Mr. Joe Wolf.

Q. 37. During the recess we are about taking will you please make another drawing of this apparatus which may be more satisfactory to yourself?

A. I will.

Adjourned to 2 p. m.

Parties appeared as before and witness continued:

Q. 38. Do you desire to make another draft of this apparatus?

A. I finished up the old one with ink and this may be just as good.

Q. 39. Does this drawing fairly represent the apparatus used in your saloon?

A. As nearly as I could make a drawing of it.

Q. 40. I see on the drawing "Meinhard Exhibit A" that you make the faucets "*e*" appear as if one was above the other. How is it; were they that way or were they side by side?

A. They were side by side on the same level.

Q. 41. And how was it with reference to the pipes described in the apparatus?

A. They entered into the upper ice box on the same level, but outside of this they were like a bundle together.

Q. 42. How was the pipe "*d*" fastened into the upper ice box?

A. They were soldered.

Q. 43. Was there any way for the water to pass out of the upper ice box into the lower ice box except through the pipe "*d*" and hose "*h*"?

A. There is not.

883 Q. 44. How much of this apparatus described on "Meinhard Exhibit A" did Mr. Neuhardt construct?

A. He constructed all except hose "*h*," which I put on myself.

Q. 45. Then the pipe "*d*" put in by Mr. Neuhardt did not run into the lower ice box?

A. No, sir; it did not.

Q. 46. Then when was it that you fastened this rubber hose "*h*" to the pipe "*d*"?

A. I think it was in the latter part of the summer of 1887.

Q. 47. Did the pipe "*d*" run into the hose "*h*;" and, if so, how far?

A. It runs in about two inches.

Q. 48. How was it fastened?

A. It was just drawn over the tin pipe, and it was so hard to put it on that when on it did not come off.

Q. 49. Did you use any wire in fastening them together?

A. I did not.

Q. 50. Was it necessary in order to make them fit tight?

A. It was not.

Q. 51. What effect, if any, did the use of this apparatus have on the beer?

A. It kept the beer cool.

Q. 52. Did you continue to use this apparatus from the time you put it in, in the fall of 1877, for about the term of four years?

A. I think we used it up to last winter.

Q. 53. Did the use of this apparatus described in "Meinhard Exhibit A" answer the purpose for which it was constructed and did it give entire satisfaction?

A. It did, sir.

And in answer to cross-interrogations proposed to him by GEORGE B. SELDEN, Esq., counsel for plaintiff above named, he saith:

X Q. 54. What was your occupation previous to 1876?

A. I used to be in the wine import business in New York city.

X Q. 55. How long have you resided in Rochester?

A. Since 1876.

884 X Q. 56. Are you a native of this country?

A. No, sir; I am born in Germany.

X Q. 57. How did you draw your beer previous to the time when you say the Neuhardts put in this device for you?

A. I drew it directly from the keg.

X Q. 58. Where is your saloon located?

A. At 75 North St. Paul street, Rochester, N. Y.

X Q. 59. Do you still occupy the same premises?

A. Yes, sir.

X Q. 60. What apparatus have you been using for drawing beer since you have taken this device out?

A. I tapped the kegs directly as before.

X Q. 61. Does this apparatus which the Neuhardts put in for you still remain in your saloon?

A. Yes, sir.

X Q. 62. The whole of it?

A. Not exactly the whole thing.

X Q. 63. How much of it remains?

A. What we had put in after the first apparatus wasn't quite satisfactory; Mr. Neuhardt had put in coils in connection with the beer pipes, and those have been taken out afterwards and we have put in straight pipes again.

X Q. 64. When was it that Mr. Neuhardt had put in these coils?

A. This was done in the summer of 1877.

X Q. 65. How long after the first apparatus was put in were the coils put in?

A. I can't say this; it may be a few a weeks afterwards—maybe a couple of months afterwards; I don't recollect now.

X Q. 66. Where were these coils placed; in the upper ice box?

A. Yes, sir.

X Q. 67. How many turns of the pipe were there in each coil?

A. I think about five or six.

X Q. 68. How far across were the coils—what was the diameter?

A. They were about six inches wide and about ten inches long.

885 X Q. 69. Did these coils rest on the bottom of the upper ice box?

A. Yes, sir.

X Q. 70. How were these coils connected with the supply pipes and the faucets?

A. They were fastened by brass couplings on each end.

X Q. 71. Of what materials were the coils?

A. They were lead pipe.

X Q. 72. The coils were simply a straight pipe bent?

A. Yes, sir.

X Q. 73. How were the supply pipes connected with the faucets before you used the coils?

A. They were connected the same way with couplings.

X Q. 74. Were they bent down from the top of the tin tubes as represented in the drawing?

A. Yes, sir; they were bent down to the bottom of the ice box.

X Q. 75. Where was your upper ice box located with reference to your bar?

A. It was located behind the bar.

X Q. 76. I suppose these coils were covered with water most of the time.

A. With ice and water.

X Q. 77. Did you wrap up the coils with anything; with cloth?

A. They were not.

X Q. 78. Did the coils work better than the bent pipes?

A. They kept the beer better—cool—but could not be so well cleaned; therefore we took them out again.

X Q. 79. How long did you use the coils?

A. Don't know exactly how long, but only a short time.

X Q. 80. For two weeks or two months?

A. I can't say.

X Q. 81. What has become of the coils?

A. I got them yet.

X Q. 82. You haven't used them since you have taken them out?

A. I have not.

X Q. 83. How long are these rubber tubes?

A. About three feet, I should say—the rubber hose "h."

886 X Q. 84. What was the diameter of the rubber hose?

A. I guess it must be about one inch inside; they are about the same inside as the tin pipes outside.

X Q. 85. What has become of that hose?

A. There are some of them there; sometimes we had to change them; take off the old and put on the new.

X Q. 86. How often did you have to change the rubber hose?

A. Not very often; only when they were in too bad condition—too dirty—we would have to take them out and wash them or put in new.

X Q. 87. How often did you have to wash them?

A. I should think about twice a year.

X Q. 88. Did these rubber pipes enter the lower ice-house in the same hole?

A. Yes, sir.

X Q. 89. How large was the hole?

A. I think it was about six inches wide.

X Q. 90. How long?

A. It was about the same length.

X Q. 91. Was it open around the pipes?

A. Yes, sir.

X Q. 92. Did any of your customers complain about your beer while you were using this device?

A. Yes; some of them.

X Q. 93. What was their reason for making the complaint?

A. Some say it was making too much foam on the beer, and others complained the beer didn't taste well.

X Q. 94. Why did you finally discontinue the use of the apparatus?

A. Because some of my customers did not like it, and my trade was so small that I did not want to keep the beer in the large ice box in the cellar.

X Q. 95. How long since you stopped using this device?

A. I think I used it up to about last winter; it might be two years ago; I am not quite sure.

X Q. 96. Whose beer did you sell while using this device?

A. Bartholomay's.

887 X Q. 97. How many bartenders were you in the habit of employing?

A. The first year we had one regular bartender, and afterwards we had none at all.

X Q. 98. Did you draw any ale through these pipes?

A. No, sir; never sold any.

X Q. 99. Was this the first apparatus you had ever seen?

A. I think it was. At least I had never paid any attention to any others.

X Q. 100. Have you ever seen the beer-cooling apparatus used in Magin's saloon?

A. Yes, sir.

X Q. 101. What was Neuhardt's business at the time he put this device in for you?

A. He kept a saloon on East Main street, and at the same time was agent for this air pump.

X Q. 102. What air pump was that?

A. The same that was used to force the beer up from the cellar.

X Q. 103. Do you know by what name it was called?

A. He told me it was sent to him from New York.

X Q. 104. What was the general shape of the pump?

A. The first one that was put in was like a machine used on steamboats; it had a walking beam; afterwards was changed by Joe Wolf for one looking like a little box. The size is about 4 inches by 6 inches.

X Q. 105. When was it that Joe Wolf put in this pump for you?

A. I don't know whether it was three or four years ago.

X Q. 106. Were you subpœnaed to come here and testify?

A. No; I was not.

X Q. 107. Are you a member of the association of saloon-keepers which is carrying on the defense against the Gordon patent?

Objected to by the counsel for the defendants on the ground that it is incompetent and immaterial, and on the further ground that there is no evidence in this case that any saloon-keepers'

888 association is carrying on this defense against the Gordon patent, and the witness is instructed that he need not answer the question unless he desires to.

A. I don't know of any such society, but I promised to testify in this case.

X Q. 108. Give the names of the parties whom you promised to testify.

A. Mr. Joe Wolf and Mr. McKay and Mr. Sullivan, the attorney in the case.

X Q. 109. When did you first talk with McKay and Wolf about this matter?

A. Some time last summer.

X Q. 110. Have you talked with them or either of them about it more than once?

A. I guess I have seen Mr. Wolf once and Mr. McKay twice.

X Q. 111. What did you tell them about it?

A. I told — that I thought there was no right for such a patent, for I had the same thing some years ago.

X Q. 112. When did you first call Wolf's attention to this device?

A. I never called his attention to it. He sometimes had to make repairs on my air pump, and he therefore knew that I had the same thing.

X Q. 113. Who was your bartender that you mentioned a few minutes ago?

A. For a pretty long time it was Felix Guenther. We had him about three years.

X Q. 114. Who was the plumber who did the work on this apparatus?

A. I think it was a man who worked for Mutchler. I don't know his name. I guess he is a member of the firm of Barr & Creelman. I don't know whether he is Barr or Creelman.

X Q. 115. Did you pay Mr. Mutchler for the work?

A. I don't recollect whether I paid Neuhardt or Mutchler. Mutchler did part of the work—that is, Mutchler's man.

X Q. 116. Do you remember the names of any of your other bartenders besides Guenther?

A. Yes. There was Otto Schantz and Fred. Guthacker.

889 X Q. 117. Were these regular bartenders?

A. Yes, sir. We had many others for concerts and picnics.

JOHN MEINHARD.

STATE OF NEW YORK, *County of Monroe,* } *ss:*

On this the 10th day of May, 1883, before me personally appeared the above-named John Meinhard and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

890 DEFENDANTS' AFFIDAVITS (COMPLAINANT'S EXHIBITS).

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN *against* JAMES D. McKAY. } No. 3771.

MICHAEL MAGIN *against* EUGENE WELKER. } No. 3809.

STATE OF NEW YORK, *County of Monroe, City of Rochester,* } *ss:*

I, Albert Steif, being duly sworn, depose and say: I am 22 years old and live at No. 35 Galusha street, and am a bartender by

occupation. I know John Meinhard, of this city, and worked for him as assistant bartender in his saloon, in Falls Field, city of Rochester, for about five years, from 1877 to 1882, and during that time used, cleaned, and examined the beer-cooling apparatus he used in his saloon, and was then and am now quite familiar with the same and its construction.

That said apparatus had three supply pipes running from the beer keg in the cellar ice box to the ice box in the saloon, where the upper end of the supply pipes were fastened to the faucets through which the beer was drawn for consumption. These supply pipes passed out of an upper corner of the lower ice box and entered the bottom of the upper ice box and ran about four inches above and eight inches below it. These supply pipes were covered with an inch or an inch and a quarter rubber hose, which was tightly pulled over the bottom of these tin pipes and ran down and
891 into the lower ice box about eight inches, through which tin pipes and rubber hose the water in the upper ice box ran over the supply pipes and into the lower ice box.

When we first commenced using this apparatus we used to occasionally dip out some of the water in the upper ice box instead of allowing it all to flow into the lower ice box on account of the ice being dirty and in order to keep the pipes and lower ice box clean.

I have read the affidavits of Otto Schantz, Raymond Stief, and Henry Koehler, dated October 8th, 1885, and where it is stated in either of said affidavits that said Meinhard apparatus had not these tin pipes and rubber hose covering the supply pipes from the upper to the lower ice box the same is untrue.

That said Raymond Stief is my brother and I remember the time he worked for Mr. Meinhard in his saloon in Falls Field. I worked there at the same time.

He was employed as waiter boy to work on Sundays in the beer gardens to help out on picnic, and parties given there, and had nothing to do with the bar where this apparatus was used except for a week or two; during this time he helped off and on about the bar.

He had no occasion to use or inspect this apparatus, and the tin pipes and rubber hose could not be seen except by a careful inspection, as they were out of sight.

The beer sold in the beer garden was drawn from the keg and not from this apparatus. The bar where this apparatus was used was closed on Sundays and only the beer garden was kept open.

My brother Raymond is a shoemaker by trade and
892 was during this time working week days learning his trade and on Sundays worked for Mr. Meinhard in his beer garden.

I also recollect when Mr. Koehler worked for Mr. Meinhard in his beer garden in Falls Field. I worked in the saloon at the same time. He was then a lad not over 17 years and worked in the concert hall on Sundays as waiter boy, the same as my brother Raymond, except that young Koehler used to come around on week days occasionally to wash the saloon floor, clean the stoves, and such like work about the saloon.

He was not bartender in the saloon where this apparatus was used, but worked as waiter boy on Sunday in the concert hall, and had no occasion to use or examine this apparatus.

During the time my brother Raymond and Henry Koehler worked for Mr. Meinhard I was assistant bartender and one Felix Guenther was bartender in the saloon.

I assisted Mr. Meinhard in moving his saloon from Falls Field to Germania hall in the year 1883, and then took the old apparatus in Falls Field saloon apart, and there again saw the tin pipes and rubber hose and the supply pipes running through them in the same way they had been used by Mr. Meinhard for about four years.

I have talked with my brother Raymond about the Meinhard apparatus since he made his affidavit, and he told me that all he recollected about the apparatus was that he dipped water out of it occasionally from the upper ice box and saw those coils in the bottom of the ice box when he was putting ice in the box; that he didn't know how the apparatus was made, as he never examined it.

893 He says he made his affidavit at the request of Otto Schantz, who came to his shoe shop and took him to Mr. Magin's saloon, where they talked the matter over, and from there Mr. Schantz and Mr. Magin took him to a lawyer's office in Powers' block, where he made an affidavit.

The same Otto Schantz called to see me about the same time and wanted me to make an affidavit like my brother's; I told him I would have nothing to do with him.

I also say that I have not been asked before this by these defendants or any one else in their behalf to state what I knew about this apparatus, neither have I been told by any one at any time not to give testimony in this action for plaintiff, and I never heard until to-day that bartenders or saloon-keepers of Rochester were requested or instructed not to give testimony in these actions in behalf of plaintiffs herein.

ALBERT STEIF.

Subscribed and sworn to before me December 10th, 1885.

HARVEY F. REMINGTON,
Commissioner of Deeds.

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN *vs.* JAMES D. McKAY. } No. 3771.

MICHAEL MAGIN *vs.* EUGENE WELKER. } No. 3809.

STATE OF NEW YORK, *County of Monroe, City of Rochester,* } *ss:*

I, Adolph Cassebeer, being duly sworn, depose and say: I am 36 years old, and live at No. 492 North Clinton street, city of

894 Rochester, and am a gasfitter and plumber by trade, and am now and for the last 10 years past have been engaged in carrying on my said business in this city.

That in the spring or summer of 1878 I made some repairs on the beer-cooling apparatus used by Gilbert & Meinhard in their saloon in Falls Field, N. St. Paul street, this city. The work I done at that time consisted in taking out three small coolers which lay in the bottom of the upper ice box through which the beer passed on its way from the ice box in the cellar to the faucets in the bar ice box, from which it was drawn for consumption. After taking out the coolers I connected the supply pipes again. While doing this work I examined this apparatus to see if it was all right and in good working order and recollect seeing in this apparatus three one-inch tin pipes about eighteen inches long soldered into the bottom of the upper ice box and projecting four or five inches above the bottom, and through each tin pipe one of the supply pipes passed. In fact while making these repairs I pulled the supply pipes through these tin pipes to connect them. There was at this time a rubber hose tightly pulled over the lower end of these tin pipes and covered the supply pipes for some feet. I do not now recollect if that rubber hose ran into the lower ice box. The only way for water to pass out of the upper ice box was through these tin pipes and rubber hose.

ADOLPH CASSEBEER.

Subscribed and sworn to before me this 17th day of December, 1885.

HARVEY F. REMINGTON,
Com'r of Deeds.

895 United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
vs.
JAMES D. MCKAY. } No. 3771.

MICHAEL MAGIN
vs.
EUGENE WELKER. } No. 3809.

STATE OF NEW YORK,
Monroe County, City of Rochester, } *ss:*

I, Earnest J. Schaub, being duly sworn, depose and say that I am 44 years old, and live at No. 72 Clifford St., Rochester, N. Y., and am a gas-fitter and plumber by trade, having worked at my trade in the city of Rochester for the last 12 years past, and am yet so engaged. I am the same Ernest J. Schaub who has already given evidence in these actions. In the fall of 1878 I repaired the beer-cooling apparatus used by Gilbert & Meinhard in their saloon at

Falls Field, N. St. Paul St., this city. The repairs I did consisted in soldering and repairing two lead pipes, through which the beer was drawn for consumption from the keg in the cellar to the bar in the saloon. While making said repairs I examined the construction of this apparatus, as I was engaged at that time in making and putting in other like apparatuses for other saloon-keepers, and say that in the said Meinhard apparatus there were three ¾-inch pipes connecting the beer kegs in the cellar ice box with the supply faucets in the saloon ice box. These pipes, on their way from the lower to the upper ice box, passed out of an upper corner in
896 the lower ice box, and entered the bottom of the upper ice box through three one-inch tin pipes about a foot in lengh, which tin pipes were tightly soldered into the bottom of the upper ice box, and extended about four inches above and eight below its bottom. These lead pipes were each inclosed in a rubber pipe fastened to the lower end of said tin pipes, and extended down and into the lower ice box about eight inches. Through these tin pipes and rubber hose the water in the upper ice box was carried out and over the supply pipes and into the lower ice box. The only way for water in the upper ice box to pass out was through these tin pipes and rubber hose and into the lower ice box. These tin pipes and rubber hose surrounding the beer-supply pipes created a cold-air passage between the upper and lower ice boxes. I done this work at the request of "Felix," who was Mr. Meinhard's bartender at this time.

I also recollect that while soldering the lower end of these lead pipes I had to turn the ends up to prevent my fire from being put out by the water flowing from the upper ice box, which was running over the beer pipes and into the lower ice box.

When Mr. Meinhard changed his saloon about two years ago from Falls Field to Germania hall, in this city, I put up his beer-cooling apparatus in his saloon in Germania hall, and I used some of the same supply pipes that I repaired in his saloon in Falls Field, and at the same time saw some of the same rubber hose that covered the supply pipes in the apparatus used in the saloon in Falls Field.

ERNEST S. SCHAUB.

Subscribed and sworn to before me December 23, 1885.

MORTON E. LEWIS,
Com'r of Deeds.

897 United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
against
JAMES D. MCKAY } No. 3771.

MICHAEL MAGIN
against
EUGENE WELKER. } No. 3809.

STATE OF NEW YORK,
County of Monroe, City of Rochester, } ss:

I, John Meinhard, being duly sworn, depose and say I am the John Meinhard who has already testified in this case. I now live in Germania hall, N. Clinton street, this city.

I have read the affidavits of Otto Schantz, Raymond Stief, and Henry Koehler, of date October 8th, 1885, to be used on this motion, and say that Otto Schantz worked for me as bartender in my saloon in Falls Field, this city, from 1879 to 1881. I deny that during that time I had coils in said upper ice box. I also deny that there was no rubber hose covering the supply pipes running from the upper to the lower ice box, and here repeat what I have already testified to in this case—that the supply pipes were enclosed in a tin pipe and rubber hose running from the upper to the lower ice box, through which the water was carried into the lower ice box in the manner stated in my former testimony.

When we first began using this apparatus and when the ice was dirty I had the bartender occasionally dip out the water in
898 the upper ice box instead of allowing it to pass through the pipes into the lower ice box in order to keep the pipes and lower ice box clean, and so testified in December, 1882, in answer to questions 15 and 16.

I recollect when Raymond Steif worked for me, from 1876 to 1879, he was then a young lad, not over 17 years, and worked as waiter boy in the beer garden or concert hall and on Sundays only, except for a week or two, when he assisted my regular bartender to wait on the bar in the saloon. During this time I had two bars, one in the concert hall and the other in my regular saloon. My saloon bartender during this time was Felix Guenther, who is now in Germany, having gone there about four years ago. The waiter boys in the concert hall had nothing to do with the bar in my saloon; their business was to serve beer in the concert hall drawn from the keg, while that drank in the saloon was drawn from this apparatus.

The bar in the saloon was always closed on Sundays and no beer was drawn from this apparatus during that time.

Young Raymond Stief was not our bartender and had nothing to do about the bar or this apparatus and had no occasion to examine it. He was hired only as a waiter boy for Sunday trade and when we had picnics and parties in the beer garden. During this time he was working week days, learning the boot and shoe trade.

I also recollect Henry Koehler; he worked in our saloon from

1877 to 1880. He was then a lad, not more than sixteen years old, and worked for us only on Sundays as waiter boy in the beer garden, about in the same capacity as the young lad Stief, except that occasionally on a week day he would come around and clean
899 out the concert hall. He had nothing to do with the bar in the saloon, except to wash the floor, clean the stove, and that kind of work. He was not a bartender of ours. He had nothing to do with this apparatus and had no occasion to use, clean, or examine it; his business was that of serving beer in the beer garden. Our bartender at that time was Felix Guenther, and Albert Stief assisted him in the bar.

When I testified in this case in December, 1882, in answer to cross-questions from plaintiff's counsel, I gave the names of those who were my bartenders while using this apparatus, from 1877 to 1881, and named Otto Schantz, Felix Guenther, and Fred. Guihacker. I did not give the names of the lads, Raymond Stief or Henry Koehler, because they were not bartenders, but only Sunday waiter boys in the beer garden who had no connection with the bar and consequently would not be likely to have any knowledge of the construction of this apparatus.

If the testimony of Otto Schantz, Raymond Stief, and Henry Koehler is true the plaintiff could in my opinion very easily have secured it in the year 1882, when I gave my testimony and while parts of this apparatus, particularly the tin pipes and rubber hose covering the supply pipes, and the supply pipes were yet in Falls Field saloon as originally constructed, as I stated in answer to plaintiff's cross-questions No-. 61, 62, 63, and 85, Meinhard testimony, and which would at once disprove this pretended newly discovered evidence.

Since that time and in the year 1883 I left Falls Field and moved my saloon to Germania hall, in this city, and then took out my old apparatus used in the Falls Field saloon, which then had the same tin pipes and rubber hose around the supply pipe and the supply pipes that I had used therein for four years. Albert Stief helped me take out the apparatus.

900 Since dictating the foregoing part of this affidavit another lot of affidavits made by Otto Hahn, October 14th, 1885; George J. Englert, October 12th, 1885, and Henry J. Weilman, October 24th, 1885, have been read to me by defendants' counsel, the same having been served on him within a few days, to wit, December 11th, 1885, as he informs me, and as to all those affidavits I can only say that those parties are some of the same crowd of about forty young lads who worked for us on Sundays as waiter boys in our concert hall and beer garden in the same capacity as the lads Raymond Stief and Henry Koehler, above referred to, and could hardly be expected to know anything about the construction of this apparatus, which could not be seen without much trouble and a careful inspection with a lighted candle or lamp, which these waiter boys had no reason or occasion to make, and it is my opinion and I verily believe that those affidavits are made on the representations of said Otto Schantz, to whom all those parties are known.

I have also read the affidavit of John V. Englert, recently served, and am unable to understand how he could know anything about the construction of this apparatus. He says he was driving a wagon; delivering beer for some brewery, I suppose. He certainly had no occasion to use or examine our apparatus and could know nothing of its construction except as he might be told by some one else.

I examined to-day, December 26, 1885, what purports to be a photograph drawing of my apparatus served with plaintiff's motion papers. It is not correct for the following, among other, reasons:

1. The lower ice box was much longer east and west than appears on the drawing, the east end extending beyond the west end
901 of the upper ice box, both ice boxes standing east and west, running parallel, one above the other, and when I gave my testimony in 1882, in answer to question 9, I then said: "The lower ice box was 8 x 8 x 12 feet, and the height of the cellar was eight feet or a little less, and this drawing makes the lower ice box appear about square, which was not the fact; and, again, this lattice-work did not extend as far west by at least six slats as it appears on this photo-drawing, the west end of the lattice-work being fastened to the east end of the lower ice box, which was a little east of the east line of the upper ice box. The beer-supply pipes could not be seen as shown on this photo-drawing, for they passed out the rear or the south side of the upper ice box, which was built against the partition wall, and the pipes ran a little slanting to the south, between two joist running north and south and into the northeast corner of the lower ice box.

This lattice-work was used to make an enclosure in the cellar in which we kept our wines and other spirituous liquors locked up and away from the help. It made an enclosure east of and adjoining the lower ice box. (Show- pl'ff's photograph and explain-.)

In conclusion I have this to say: that I am not a party to these actions. I am not using any apparatus for drawing beer from the cellar, my saloon being in the basement, I drawing the beer direct from the keg. I have no interest of any kind in these actions one way or the other, except to state the facts and truth about my apparatus, and now repeat what I testified to in 1882, when there was no question about my apparatus, that the apparatus I used for four years in my saloon in Falls Field was exactly as I testified to when examined as a witness in these suits. I have no feeling against the plaintiff, but, on the contrary, we are good friends
902 and old acquaintances, having known him as a saloon-keeper for many years and much longer than I have known the defendants.

JOHN MEINHARD.

Subscribed and sworn to before me this 26th day of December, 1885.

J. B. BOSTWICK,
Commissioner of Deeds.

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN *against* JAMES D. McKAY. } No. 3771.

MICHAEL MAGIN *against* EUGENE WELKER } No. 3809.

STATE OF NEW YORK, *County of Monroe, City of Rochester,* } *ss:*

William Barr, Jr., being duly sworn, deposes and says: I live at No. 10 Wentworth street, city of Rochester, N. Y., and am a member of the firm of Barr & Creelman, plumbers and gas-fitters, doing business at No. 30 S. St. Paul St., Rochester, N. Y.; that in the years 1877 and 1878 I was working at my trade of gas-fitter and plumber for Herman Mutschler, of this city; that while working for Mr. Mutschler, and in the summer or fall of 1877, I done some work for Gilbert & Meinhard on the beer-cooling apparatus they were using in their saloon in Falls Field, N. St. Paul street, in this city. The work I done consisted in repairing three-eighths or half-inch lead pipes connecting the beer kegs in the ice box in the cellar
903 with the faucets in the ice box in the saloon, through which pipes the beer was *was* drawn for consumption. I repaired three of these lead pipes, the length of each being about ten feet. Each pipe was fastened to the beer keg in the cellar by means of a rubber-hose coupling or attachment, and from this the lead pipes ran a little slanting and out through an upper corner in the lower ice box and entered the bottom of the upper ice box through tin pipes about twelve inches long and an inch in diameter, which tin pipes were tightly soldered into the bottom of the upper ice box and projected three or four inches above and about eight inches below the bottom of the ice box. There were three of those tin pipes in the bottom of the upper ice box; there was a lead coil for each supply pipe through which the beer would pass on its way to the faucets. The only way for water to pass out of the upper ice box was through these tin pipes.

WILLIAM BARR, JR.

Subscribed and sworn to before me December 26th, 1885.

FRANK T. SKINNER,
Commissioner of Deeds.

904 *Testimony Introduced by Stipulation, Taken in a Prior Suit.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN
vs.
JAMES D. MCKAY.

MICHAEL MAGIN
vs.
EUGENE WELKER.

Testimony in rebuttal.

GORDON, CHARLES, sworn, and examined by Mr. SELDEN:

Q. 1. What is your age, residence, and occupation?

A. I was fifty-nine years of age the 25th of last September; I am a brewer and maltster.

Q. 2. How long have you been engaged in your present occupation?

A. Twenty years this last October, in Rochester; I was maltster before that in Clyde.

Q. 3. Clyde New York?

A. Yes, sir; Wayne county.

Q. 4. Are you the inventor and patentee of the improvement in apparatus for cooling and drawing beer described in letters patent No. 248,646, dated October 25, 1881?

A. Yes, sir.

—. State fully the circumstances connected with the invention of the said patented apparatus.

905 A. Well, Mr. Magin had an apparatus there for drawing beer that he said was impractical; he didn't think he could use it. He said he thought he would have to go back to first principles; that was drawing from the keg; and I told him that I didn't think he would; I thought I could fix it for him, and set to work to do it. I made him a little drawing of my idea of the way of fixing it, and he asked me what it would cost; I told him it would not cost a great deal. He had been rigging up and fixing up so much there, and it had cost him so much more than he had any idea of that he was afraid to have anything added to it. I told him it would not cost him a great deal, and I thought it would do the work that was required. He says, "Can it be done for twenty-five dollars?" I told him, "Yes; for half that money." I told him, "I will do it for fifteen dollars; I will put it in for you, and if it don't do the work you need not pay me a cent." He put his hand in his pocket, I think, and was going to pay me then; I told him a good paymaster paid when the work was done. I went on and got the pipe, filled it with resin and set it to work, and I think before noon the next day I had my money in my pocket, and he was perfectly satisfied with its working. He did not want I should say anything

to any one else how he was drawing beer; he didn't want I should let everybody know just how he was drawing his beer; he thought he had a success there, and there was nothing said about it for a year and a half or two years, or until we applied for the patent. Just before we applied for the patent I put one in for Barnard—about a week or ten days before we applied for the patent.

Q. 5. Give the date when this apparatus was put in Mr. Magin's saloon.

A. I think it was the first Sunday in June the pipe was put in.

Q. 6. What year?

A. 1879.

Q. 7. Have you any bills or receipts by which you fix the date?

A. Yes, sir; I have, but I didn't know just where to put my hand on them and I went to Mr. Siddons' books this morning, and came right from there here.

906 Q. 8. What was the date on Mr. Siddons' books?

A. I found that they had me charged there with fourteen pounds of galvanized-iron pipe, June the 7th, 1879; but he says that the work might have been done a week previous, so that I can't fix it, just the date. It would take quite a little looking to find just the date that the man did the work on the pipe, but I told him I did not think it was necessary. He said the charges were charged up every Saturday night.

Q. 9. Describe briefly the apparatus which Mr. Magin had in his saloon before your device was put in.

A. I found that he had the pipes running from the faucet to the lower ice box and had them protected by hair felt wound around them. I think the size was four to five inches through when they first put it up, and they added to it until, I guess, they got in the neighborhood of seven or eight inches. It is called hair felt. They used that for a non-conductor.

Q. 10. Around the beer pipes?

A. Around the beer pipes, to protect the pipes from the heat.

Q. 11. State whether or not the apparatus you put in Magin's saloon in June, 1879, contained the cold-air passage between the upper and lower ice box substantially as described and claimed in your patent.

A. It did.

Q. 12. State whether or not it also contained the double pipe surrounding the cold-air passage filled with the non-conducting material.

A. Yes, sir; it did. I think the pipe can be produced to-day—the original pipe.

Q. 13. Do you know who put this apparatus in for Magin—the apparatus he had before you put yours in?

A. Joe Wolf had the superintending of it. I don't know just who done the work.

Q. 14. What was the defect in this apparatus that caused Magin to desire a change?

A. The pipes will get warm between drawings. Whenever he would rest for five or ten minutes between glasses the pipes would

get warm, and the first glass out of them would be all froth or foam as they call it; could not get any beer but would be warm.

907 Q. 15. Has your apparatus remained continuously in use since you put it in?

A. Yes, sir.

Q. 16. Have you introduced it into other saloons?

A. Yes, sir.

Q. 17. State the number and names of the saloon-keepers who are now using your device, and give, as near as you can, the dates when the devices were put into the various saloons.

A. I put in two for William Barnard in the spring of 1881. Then, in the summer, put one in on Front street, for Sauerteig, in 1881. In 1882, spring of 1882, I put in two or three; put in one for Hamilton McNeil, Lyell street; one for Mrs. Kelly, on Water street. That was the summer of 1882—spring or beginning of summer; one for Oaks, on Exchange street, and one for Farquhar; one for Everson, Palmyra, in the summer and fall of 1881. That is all I can think of just now. In the spring of 1882 I put in one in Baltimore, one in Washington, and one in Richmond, Virginia.

Q. 18. Have any of these paid you a royalty on the patent?

A. All that have paid have paid it and some have not paid. There is a bill due me in Baltimore of two hundred dollars, but there is no pay.

Q. 19. Do you know how many of your devices Magin has put in since he purchased the patent of you?

A. I do not. I have made the drawings for several of them; Powers' hotel, Appel, back of the Arcade; Cogar, on Exchange street, and Eureka club. I put in one at Buffalo; that was in December, 1881; made drawings for Mr. Magin and went with him to Ithaca, and we put in one.

Q. 20. Do you know Eugene Welker, the defendant in one of these suits?

A. Yes, sir.

Q. 21. Do you remember this testimony of Mr. Welker's?

A. I didn't see it.

Q. 22. Were you not present when it was taken?

A. No.

Q. 23. Have you read Mr. Welker's testimony? (Shows witness testimony.)

A. Yes, sir; I have just read it.

908 Q. 24. State whether or not you at any time gave Welker any license or authority of any kind to use your invention.

Mr. Sullivan objects to the question as leading and as calling for a conclusion of law.

A. I did not; I did not see Mr. Welker until after the box was nearly completed; had it all in except the faucets.

Q. 25. Did you tell him that you had made application for a patent on the device?

A. I think I told him that he might as well have the filled faucet, as he had the filled pipe, and told him where to get them. I told him that there was a patent applied for; they were a patent faucet, but he could get them of Klein, and he said he had already made arrangements with Klein to put them in, but he could not wait any longer and was going to have Wolf put them in next day. He had the lower ice box and upper ice box all complete. Mr. Welker was not there the first time I called; a day or two after that I stopped there again and didn't say anything to his man about the patent, but next time I saw Welker he showed me his rig; had his pump in, hand pump. I asked him why he didn't get in a water pump, and he said he had no water in the place, and I said, "What kind of faucets are you going to have?"

Q. 26. Did you tell Mr. Welker that you had made application for a patent on the device?

A. Yes, sir; I did.

Q. 27. Can you state the date of this first visit you made to Welker's saloon; was it before or after you made your application?

A. I think it was just after.

Q. 28. Previous to your invention of the device in controversy here had you ever seen or heard of, in any way, any apparatus for drawing beer containing a cold-air passage?

A. No, sir.

Q. 29. Had you ever seen the apparatus which is alleged by the defendants was used by John Boehm on North St. Paul street?

A. No, sir.

909 Q. 30. Were you ever in Boehm's saloon prior to June, 1879?

A. No, sir.

Q. 31. Was Boehm a customer of yours prior to that time?

A. Not on Franklin street.

Q. 32. What do you mean by that; not while he was on St. Paul street?

A. Not while he was on St. Paul and Franklin street.

Q. 33. Do you know defendants' witness, Ernest J. Schuab?

A. Yes, sir.

Q. 34. Did Schaub at any time do any work for you on any of these devices which you put in the various saloons here?

A. Yes, sir; he lined the box of Farquhar's.

Q. 35. Did you have any conversation with Schaub about that apparatus put into Farquhar's saloon?

A. Yes, sir.

Q. 36. What did he have to say about it?

Mr. Sullivan objected as immaterial and incompetent.

A. He said he thought there would too much cold air go out of the lower ice box, out of the pipe up through into the small ice box. I told him I thought not; the working of them did not say so.

Q. 37. Did he say anything to you about having used any similar device?

A. He said that there had been an upper ice box used in Berlin.

Q. 38. Did he do the work that you employed him to do to your satisfaction?

A. He completed it to my satisfaction; he made some mistakes and had to do it over again.

Q. 39. Did he say anything to you at that time about this apparatus of Boehm's?

A. No, sir.

Q. 40. Do you know whether he has been engaged in putting in these devices for drawing and cooling beer with a cold-air passage since you put the one in Farquhar's saloon?

A. Yes; I have seen two or three that they said he put in; I have not seen him put any in.

910 Q. 41. In whose saloons were these two or three devices put in?

A. Two on Front street; they said he done the work; a widow woman named Bauerschmidt and one for Stallknecht.

Q. 42. Have you at any time known of Schaub's competing against you by offering to do the work at lower prices than you would do it?

A. He has not competed with me at all. Since I sold out to Mr. Magin I have had nothing to do with the city of Rochester unless it has been in making a drawing, something of that sort, for Mr. Magin.

Q. 43. Have you visited St. Louis since the commencement of these suits in order to ascertain what was the construction and operation of apparatus for drawing and cooling beer used in the saloons there?

A. Yes, sir.

Q. 44. What was the date of your visit?

A. About the first of October, 1882.

Q. 45. Did you see any such devices there?

A. I did.

Q. 46. Please describe them and in what respect they differed from your own patent.

A. Instead of the cold air passage they had a pipe filled with sand, they told me. I didn't see the filling, of course; they said it was filled with sand leading from the upper ice box to the lower one, and ice in the upper ice box—ice and water. There was one of the boxes didn't have any ice in it at all; it was about two-thirds full of water; it held water instead of leaking away through the sand; it got fouled and the water stood in the upper ice box. That was the case with all that I examined. They had to dip the water out, they told me, from the upper ice box, because it would not run through.

Q. 47. State whether or not in these devices at St. Louis there was any connection whatever between the upper and lower ice boxes through which the water could pass.

A. There was not in any that I saw; two of them had a wooden plug driven through them, and the beer pipes went up through that wooden plug.

Q. 48. Did you go to see all that were in St. Louis?

A. No, sir; I don't know how many there was there; the man that put them in took me to three or four.

911 Q. 49. He told you they were all alike?

A. All alike; yes, sir; he said he put them all in.

Q. 50. State what advantages in practical use your patented invention possesses over the apparatus which you saw in St. Louis.

A. We have an open air passage from the upper to the lower ice box, with a free circulation of the cold air from the upper to the lower box, which keeps the pipes of the same temperature with the upper box as if it had ice in it—in this air passage—and, of course, it cools the pipe and gets a good glass of beer out—the first glass.

Q. 51. Is there any economy in your device?

A. Yes, sir.

Q. 52. Which is easiest to keep in order?

A. Mine. This apparatus of ours is perfectly practical in its workings, while what I saw of those in St. Louis they are impractical; they get warm between the two boxes; if the weather is warm of course there is nothing to hinder their getting warm, because there is no circulation.

Q. 53. Is there any jacket or non-conducting material about the sand-filled pipes in the St. Louis devices?

A. No, sir.

Cross-examined by Mr. SULLIVAN:

Q. 54. When do you say you put this apparatus in Mr. Magin's saloon?

A. In the spring of 1879 or summer; about June.

Q. 55. Who put it in?

A. Mr. Magin and myself done the putting in after the pipe was made.

Q. 56. Who made the pipe for you?

A. Mr. Siddons or his men.

Q. 57. Prior to that time Mr. Magin had used a different apparatus, had he?

A. Yes; for a short time.

Q. 58. Has Mr. Magin continued using the apparatus you put in up to the present time?

A. Well, it has been taken out and a new one built.

Q. 59. By whom?

A. I put it in.

Q. 60. By yourself?

A. Yes, sir.

Q. 61. After the same plan?

A. Yes, sir.

912 Q. 62. Which is an apparatus similar to the one described in your letters patent in Gordon's letters patent?

A. Yes, sir.

Q. 63. You have been in the beer business in Rochester for many years, have you not, Mr. Gordon?

A. Yes, sir; twenty years; ale business, not beer.
Q. 64. In the manufacture of ale?
A. Yes, sir.
Q. 65. You are a member of the firm of Hathaway & Gordon?

Mr. Selden objected as immaterial.

A. Yes, sir.
Q. 66. Who first spoke to you about an apparatus of this kind, Mr. Gordon?

Same objection as before.

(Question repeated.)
A. I don't recollect of any one speaking to me about it.
Q. 67. Did you have a conversation with Mr. Magin about it?
A. Yes; not about this; I told him I thought he could overcome the objection of using the other.
Q. 68. Where was this conversation had?
A. In his saloon.
Q. 69. Do you recollect what year that was?
A. I think it was about the last of May, 1879.
Q. 70. About that time and for some years previous to that your business called you to visit many of the saloons in the city of Rochester, did it not?
A. Yes, sir; I had occasion to go to saloons on business.
Q. 71. Did you act as soliciting agent for your firm about this time?

Same objection as before.

(Question repeated.)
A. I never solicited orders; never was agent for the firm; got business whenever I could, but never acted as salesman, in that capacity, as a salesman; we had men to do that for us.
Q. 72. Were you at that time and for some years previous in the habit of calling at the saloons of your customers?
A. Yes, sir.
913 Q. 73. And taking orders from them for beer and settling their accounts?

Mr. Selden objected as immaterial.

A. I have called more particularly to settle accounts that would sometimes get larger than we cared to carry and called to see if they could not reduce them. I don't know that I ever called to get an order for a barrel of beer in my life; it has never been my business. I have taken orders both at office and at saloons.
Q. 74. Many of the saloon-keepers in Rochester are customers of yours, are they not?

Same objection as before.

A. Yes, sir.
Q. 75. And have you on many occasions visited the saloons of all your customers?

Same objection.

A. No; I have not; not one in twenty.

Q. 76. Mr. Welker, prior to the commencement of this action against him, had been your customer for many years, had he not?

A. Well, I didn't know that he ever bought a barrel of beer of us until after I had called there the first time.

Q. 77. And that was prior to the commencement of this action and also prior to the time he put his apparatus in, was it not?

A. No, sir; he had his apparatus in.

Q. 78. Was it prior to the commencement of this action?

A. Yes, sir.

Q. 79. Was that the first time you called at Mr. Welker's saloon?

A. Yes, sir.

Q. 80. What was the occasion of your calling there at that time?

A. I called to see the apparatus.

Q. 81. You had heard of his having an apparatus, had you?

A. Yes, sir.

Q. 82. Who told you about it?

A. Philip Bartholomay.

Q. 83. And at this time Mr. Welker was a customer of yours and was owing you for ale?

A. No, sir; not owing a cent.

Q. 84. Was he a customer?

A. No, sir.

914 Q. 85. He had purchased ale of you at this time or some time prior to it, had he not?

A. Yes, sir; he had purchased ale prior to this time.

Q. 86. And you had called there for the payment of the bill, had you not?

A. No, sir; didn't know when I called there that he had ever had a barrel of beer of us; didn't know there was such a customer in the city of Rochester. Mr. Bartholomay told me where he was and I went there.

Q. 87. Did you see Mr. Welker there?

A. No, sir.

Q. 88. You saw his representative?

A. I saw the clerk and a lady there that I took to be his wife.

Q. 89. Did you have a conversation about the apparatus?

A. No, sir.

Q. 90. Did you see the apparatus at this time?

A. Yes, sir.

Q. 91. Who showed it to you?

A. I showed it to myself.

Q. 92. Then when was it you first saw Mr. Welker to have a conversation with him about this apparatus?

A. About two or three days later than that.

Q. 93. Where did you see him?

A. Same place; at his place of business.

Q. 94. Did he take you down cellar and show you the apparatus?

A. Yes, sir.

Q. 95. Explain to you the working of it?

A. Well, no, he didn't explain the working.

Q. 96. Did you say anything to him about it?

A. Yes, sir.

Q. 97. What did you say to him about it?

A. About the first thing that I told him was that he had too large an ice box below; it would cost him too much to run it.

Q. 98. What else?

A. I saw he had a hand pump and I asked him why he didn't get in the water pump, and he said the city water was not there yet or he should.

Q. 99. What else?

A. He asked if he could draw ale in the box; he said he had planned his box to draw ale and all. I said yes, he could,
915 but it was not economy to build an ice box for ale, for we preferred ale to be out in an open cellar; ale was better not kept too cool. He said he had planned for putting his ale there in the box. I told him he could do it, and we went upstairs and he asked how I liked it. I told him it looked well so far and asked him when he was going to get it running and he said he was waiting for the faucet. I asked him what kind of a faucet he was going to have and he said he didn't know; he had been trying to get Klein to make him some faucets, and I said they were the kind to get. He said, "I have been waiting a week or two"—I think he said a week—"for Klein to build the faucets," and he said Joe Wolf was going down to put them in; I think he said the next day.

Q. 100. You have now stated about the substance of what was said in that conversation, have you?

A. Yes, sir.

Q. 101 What was said about the pipe or faucets?

A. He had told me already that he had the pipe. Mr. Bartholomay had it made and filled with resin, pipe and box. I said, "That is right." I said, "Seeing you have got it so far and so good you better have it all and have the filled faucet." I said, "There is a patent applied for and I think you will find it works first rate." He said, "Bartolomay says it works good." I think I asked Klein the next morning why he didn't furnish the faucets. I think he told me he was going to. I said, "Mr. Welker told me last night that he was going to have Wolf put in the faucets the next day after I was there."

Q. 102. Is this Mr. Klein referred to the gentleman who made the faucets for Mr. Magin?

A. Yes, sir.

Q. 103. And was he engaged at that time in making such faucets for Mr. Magin?

A. He made Mr. Magin's.

Q. 104. Under your instruction?

A. Yes, sir; under my instructions.

Q. 105. That was the last and only conversation you had with Mr. Welker in reference to this apparatus?

A. No, sir; I met him on the street once.

916 Q. 106. After that?

A. Yes, sir.

Q. 107. How long after?

A. Perhaps a month.

Q. 108. Did you have a conversation at that time about this apparatus?

A. I asked him how it worked; if he had got it in operation. He said yes. I asked how it worked. He said, "First rate."

Q. 109. You knew Mr. Boehm as a saloon-keeper in the city of Rochester for many years, did you not?

A. Yes, sir.

Q. 110. For how many years?

A. I was not personally acquainted with Mr. Boehm. I never had any conversation with Mr. Boehm——

Q. 111. Did you know him personally or by reputation for many years?

A. Yes, sir.

Q. 112. He had also been a customer of yours for many years?

A. He had; yes, sir; on this side of the river (west side).

Q. 113. While Mr. Boehm kept saloon on the west side of the river did you visit his saloon?

A. No, sir; I don't think I was ever in Mr. Boehm's saloon while he was on the west side of the river.

Q. 114. Were you on the east side of the river?

A. I have been in there but twice.

Q. 115. When was that?

A. The spring of 1882 or 1883; went in there to get a petition signed.

Q. 116. Mr. Boehm had kept a saloon on the corner of Franklin and St. Paul street- for many years prior to that, had he not?

A. Yes, sir; I understand it was a saloon ever since it was built.

Q. 117. How many years?

A. I could not tell you exactly.

Q. 118. About how many?

A. I think it was built in 1875 or 1876.

Q. 119. And you had known Mr. Boehm during that time, had you not?

A. I never spoke to Mr. Boehm until I went to get a petition signed. I knew who he was; knew him by sight.

917 Q. 120. Mr. Boehm was rather a particular man about his saloon, was he not?

Mr. Selden objected as immaterial.

A. I don't know.

Q. 121. Didn't you notice his saloon was kept very neatly—very neat and inviting looking?

A. Not particularly so.

Q. 122. Had he not the reputation in the city here of keeping one of the nicest saloons in the city, where ladies frequently came?

A. Not to my knowledge.

Q. 123. You knew that he had a private room fitted up for ladies and gentlemen, did you not?

Mr. Selden objected as incompetent and immaterial.

A. I did not.

Q. 124. Were you ever in Mr. Boehm's cellar?

A. No, sir.

Q. 125. You had a talk with Mr. Boehm about this apparatus that he had in his saloon?

A. No, sir.

Q. 126. Never talked with him about it?

A. Never exchanged a word with him about it.

Q. 127. You heard and read his testimony in this case?

A. I heard his testimony; yes, sir; some of it.

Q. 128. You say that Mr. Schaub assisted you in putting in this apparatus in Farquhar's saloon?

A. He done some work there; yes, sir; lined the lower ice box and made the pipe leading from the upper ice box.

Q. 129. Is that all he did?

A. That is all the work he done for me. He done for Mr. Farquhar and for me about a half an hour's work—just connected the rubber hose that led the water to the pump.

Q. 130. Did he do all the work on the apparatus except the woodwork?

A. No.

Q. 131. He put the apparatus together, did he not?

A. He put the pipes in.

Q. 132. The pipes and attachments?

A. Yes, sir—that is, for Mr. Farquhar.

Q. 133. That part of the apparatus Mr. Farquhar furnished?

A. Mr. Schaub furnished it, I think.

918 Q. 134. Farquhar paid for them?

A. Yes, sir; I had nothing to do with the beer pipes only to connect them with the upper ice box after they were put in. I done that myself.

Q. 135. You say that Mr. Schaub made some mistake in putting in this apparatus; please state what the mistake was.

A. He lined it and he left the nail heads exposed.

Q. 136. In the lower ice box?

A. Yes, sir; and had to have them soldered over, of course; that was half a day's work.

Q. 137. Is that all?

A. Then the pipe within a pipe he didn't get exactly as I told him, but was so near that we let that go, used it as he made it. I put it in.

Q. 138. What else?

A. I think that was about all the mistakes he made in regard to the work.

Q. 139. Leaving the nail heads exposed did not affect the practical working of this apparatus, did it?

A. No; only the durability of it.

Q. 140. Did Mr. Schaub say to you about this apparatus while you were putting the Farquhar apparatus in——

A. He said he had seen an upper ice box in Berlin; he said they had no lower ice box, and asked me if I did not think there would too much air go up that opening of the pipe from the lower ice box; asked if I didn't think they would lose too much air. I told him I thought not. He said he thought it would make a draught.

Q. 141. What else did he say?

A. I told him I thought not. I said it didn't seem to work that way; told him he could tell when that got to work whether it did or not.

Q. 142. What, if anything, was said about other apparatus having been put in saloons in Rochester?

A. He said he had put in other apparatuses with coolers in. I don't think he told me he had put any in Rochester; think he said he had seen them in Berlin; there was a little apparatus put in the ice box and the beer drawn through a cooler; said it cooled it enough without a lower ice box.

919 Q. 143. What did he say, if anything, about apparatuses having been put in in Rochester?

A. He didn't say.

Q. 144. Was Mr. Farquhar's saloon the first you put an apparatus in after putting the one in for Mr. Magin?

A. No, sir.

Q. 145. In whose saloon did you put the first after Mr. Magin's?

A. Mr. Barnard's.

Q. 146. Mr. Barnard's?

A. Yes, sir; William Barnard's.

Q. 147. Whose next?

A. I think Sauerteig's.

Q. 148. Whose next?

A. Everson's, Palmyra.

Q. 149. Whose next?

A. I put in three or four, all within about a month or six weeks.

Q. 150. Before putting in the Farquhar apparatus?

A. Yes, sir.

Q. 151. Put in three or four before putting in the Farquhar apparatus?

A. Yes, sir.

Q. 152. Did you ask Mr. Schaub to continue on working for you?

A. No, sir.

Q. 153. After putting in the Farquhar apparatus, did you ask him to put in any other?

A. No, sir.

Q. 154. Did you ask him to put in any other apparatus?

A. No, sir.

Q. 155. Where did you put in the last apparatus?

A. I think Gus. May.

Q. 156. Rochester?

A. Yes, sir.

Q. 157. When was that?

A. It was in the summer of 1882.

Q. 158. On your direct examination you said that in your conversation with Mr. Welker that he told you that he had a talk with Philip Bartholomay about the apparatus that he was then putting in; will you please state what Mr. Welker said?

A. He said that Philip Bartholomay had put in a rig for him; didn't say that he had talked with Philip Bartholomay about it; he said that Philip had designed it and put it in for him; it was under his directions that it was put in.

Q. 159. What was said about the pipe being filled with resin; whose suggestion was that?

A. He didn't say.

920 Q. 160. What was said about that?

A. I told him that was all right; didn't say who made the suggestion.

Q. 161. You had a talk with Mr. Bartholomay before this about the apparatus, had you not?

A. Yes, sir; in Mr. Magin's saloon. He told me that Welker was putting in a rig on the Wakely farm.

Q. 162. You mean to say that Welker, living on the Wakely farm, was putting in a rig?

A. Yes, sir.

Q. 163. What do you mean by rig?

A. An apparatus for cooling beer.

Q. 164. What else did he say?

A. I think he told me he was putting it in just like Magin's.

Q. 165. Did Mr. Bartholomay assist in putting Mr. Magin's in?

Mr. Selden objected as immaterial.

A. He drew plans for a box, which was not adopted; he was an architect, Mr. Bartholomay was. That was all the assistance he rendered. I don't know who paid for it; I can't say as to that.

Q. 166. What else did he do besides drawing plans for a box?

A. Not anything.

Q. 167. Draw a plan of an apparatus also?

A. No, sir; only for the lower ice box.

Q. 168. Where was that plan drawn?

A. I don't know.

Q. 169. Was the plan drawn when you first saw it?

A. Yes, sir; the plan of Mr. Magin's lower ice box.

Q. 170. Was it in Mr. Magin's or Mr. Bartholomay's possession when you saw it?

A. In Mr. Magin's.

Q. 171. Then Mr. Bartholomay was not present?

A. He was not at the first interview. I made some suggestions and Mr. Magin asked me to come down; said they were going to commence building a box; come down and make the same suggestions to Philip, and I done so, and they carried out my plans. I made them a little sketch, and they dropped his nice painted picture and took mine.

Q. 172. Mr. Bartholomay then had drawn a complete plan of this apparatus, had he?

A. Of the lower ice box.

921 Q. 173. Lower ice box showing the connections?

A. No.

Q. 174. You have not that plan now, have you?

A. No, sir.

Q. 175. Did Mr. Bartholomay ever claim that he had made this invention?

A. No.

Q. 176. Did you ever hear him say anything about it, about this invention, or any part of it?

A. Nothing but the lower ice box.

Q. 177. What did he say about the lower ice box?

A. He said he had built it for the purpose of keeping beer cool in the cellar.

Q. 178. Did he say who he was building it for?

A. For Mr. Magin.

Q. 179. And this was before you made any suggestion to Mr. Magin, was it?

A. Yes, sir.

Q. 180. How long before?

A. Perhaps a month.

Q. 181. What use did Mr. Magin intend to make of the lower ice box?

A. He put beer in it and undertook to use it; did use it until the weather began to get warm, and the beer, first glass, would come up warm. He told me that he had been to Wolf's twice to have him tell him how he could keep his beer cool, and Joe said he had the same difficulty; all he had to do was to throw away part of the glass and sell it by measure; but Mr. Magin told me he could not stand that; that he would have to go back to first principles—that is, drawing from the keg.

Q. 182. Where is Mr. Philip Bartholomay now?

A. I think in Chicago; he was the last time I saw him.

Q. 183. You had heard of Mr. Joe Wolf having put in an apparatus before that?

A. Yes, sir; I had seen it.

Q. 184. Did you ever make an invention which you had patented, except this one in suit, which you claim to be the inventor of?

Mr. Selden objected as incompetent and immaterial.

A. No, sir; that is the first patent.

Q. 185. The first and only patent you ever procured or ever applied for?

A. Yes, sir; but I have made a good many inventions, but didn't know the value of a patent.

922 Q. 186. What did you invent, Mr. Gordon?

A. I invented a tube within a tube for colling beer; put a tube within a tube for economizing cold water.

Q. 187. What else?

A. Then I was once making a pattern, a segment pattern, and not knowing how to do it I hit upon a thing that Mr. Wood told me that his boss would give him five thousand dollars for if he could have the idea. The idea was to get the line of the segment without dividers.

Q. 188. Who is Mr. Wood?

A. He was a pattern-maker. His boss objected to his showing me how to do it, and not knowing how I had to devise a way myself, which he adopted.

Q. 189. What else?

A. Several things.

Q. 190. Name something else.

A. I had an apparatus down at Clyde that seemed to be novel to mechanics to run a hoist wheel with by machinery, disconnecting the power.

Q. 191. Have you now stated all the inventions you claim to have made?

A. No; I have not, because I don't think of them. A good many things have occurred to me; the necessity was the mother of the act.

Q. 192. Yet you have never considered any of your inventions of sufficient value to be patented except this one?

A. I didn't think this was, hardly. I was urged to get this, but it seems it is a good thing and they all want to use it.

Q. 193. What saloons did you visit while in St. Louis for the purpose of seeing the apparatuses they were using there?

A. Well, I think one was Peeber's, another Bissel & Co.

Q. 194. Any others?

A. I visited four. Mr. Abel, the man who put the apparatuses in, took me around in his buggy.

Q. 195. And did you inspect the apparatus in each saloon?

A. Yes, sir; went there for that purpose; inspected as well as I could. I didn't see the sand. I had to take their word for the filling. Mr. Abel stated they were filled with sand.

923 Q. 196. Whose saloon did you first visit?

A. I think it was Peeber's.

Q. 197. That was an apparatus used for drawing and cooling beer similar to your device, except that it had a pipe filled with sand instead of a cold-air pipe?

A. Yes, sir.

Q. 198. Did Mr. Abel also say to you that he had been using some filled with gravel?

A. I think he said they were filled with sand.

Q. 199. Say anything about being filled with gravel?

A. No; he didn't. Mr. Harvey, of Washington, told me; that is how I came to go on there. He told me that Abel had put in this sort of an apparatus when I was in Washington about two or three months before I went there. I think he said they were filled with sand or gravel.

Q. 200. They had some of those in use in Washington?

A. I don't know.

Q. 201. You were informed by a person in Washington that they were using them in St. Louis?
A. Yes, sir.

Redirect examination:

Q. 202. In changing the beer-cooling apparatus you put in Magin's saloon did you enlarge the same and increase the number of faucets?
A. Yes, sir.
Q. 203. That was the reason for making the change, was it?
A. One of the reasons; to enlarge the lower ice box and the upper one as well.
Q. 204. You say that you told Welker that the resin filling was all right?
A. Yes, sir; told him that.
Q. 205. What did you mean by the words "all right"?
A. I meant that that would do the work all right; so far so good. I told him the pipe and upper box were filled with resin, but I told him the lower ice box was too large. I says, "That is like Mr. Magin's," and told him there was a patent applied for on it.
Q. 206. Did you tell him you had applied for a patent?
A. Yes, sir; and he said Philip Bartholomay told him the same thing.
924 Q. 207. Did Welker ever pay you any money for a license under the patent, or any consideration of any kind?
A. No, sir.
Q. 208. Did he ever offer to do so?
A. No, sir.
Q. 209. Did you tell — that if you got your patent you would expect him to pay a license fee?
A. I don't know that I told him that. I didn't know whether the patent would be granted. I told him I had applied for a patent.
Q. 210. You say you could not see the sand in the pipes in the devices you saw in St. Louis. What was the reason you could not see the sand?
A. The box was from one-third to two-thirds full of water—that is, the upper box. I saw that one of the boxes had no ice in. It was about two-thirds full of water.
Q. 211. What did you see at the lower end of the pipe?
A. I saw a wooden plug. There was a wooden plug driven there. It had a plug and three pipes leading up through a little hole in the plug.
Q. 212. Was the plug tight.
A. It seemed to be.
Q. 213. Any possible chance for the circulation of air?
A. No, sir.

Mr. Sullivan objected to the question as leading.

Adjourned to 10 o'clock a. m., March 5th, 1885.

CHAS. GORDON.

Read, subscribed, and sworn to by deponent before me March 10, 1885.

ADELBERT CRONISE,
Referee and Special Examiner.

MARCH 5, 1885—11 o'clock a. m.

MURA DOMINICK sworn in behalf of the plaintiff and examined by Mr. SELDEN:

Q. 1. What is your age, residence, and occupation?

A. My age is sixty years; my occupation, carpenter and builder; my residence, 33 Gorham street, Rochester, New York.

Q. 2. How long have you been engaged in your present occupation?

A. As a carpenter thirty-five years, but as a contractor about nineteen years.

925 Q. 3. Did you know John Boehm, saloon-keeper, corner of North St. Paul and Franklin street-, of this city?

A. Yes, sir.

Q. 4. How long have you known him?

A. Something about twenty-two years.

Q. 5. Have you been in the habit during this time of doing carpenter work for him?

A. Yes, sir—that is, since 1875; not previously to that.

Q. 6. Did you do any carpenter work on the building which Mr. Boehm erected on the corner of North St. Paul and Franklin streets?

A. Yes, sir; I done the carpenter work by contract.

Q. 7. When was this?

A. 1875; commenced about April.

Q. 8. When was the building completed?

A. Something along in July; could not say just when.

Q. 9. Did you do the wood-work in the saloon in that building?

A. Yes; I done that by the day.

Q. 10. Did you furnish the counters?

A. Yes, sir.

Q. 11. Did you do the wood-work on an apparatus for drawing beer?

A. I built an ice box.

Q. 12. At that time?

A. No; I didn't do anything more than to build him a chest—something the form of a chest—in the cellar to put his beer in; used it to put his beer in and drew out of a keg at that time, 1875.

Q. 13. Did you at any time later build an ice box for him?

A. Yes, sir.

Q. 14. When was this?

A. That was in 1877, some time along in July also—about that time. It was middle of summer; I should judge about July.

Q. 15. How do you fix this date?

A. I refer to my charges on my book.

Q. 16. Describe the ice box which you say you made for Boehm in July, 1877.

A. It was made of two-inch hemlock matched plank, with a bottom in, and from the floor to the ceiling; might have been about six feet long, probably four or five feet wide and seven feet high, and a door on. In 1875 I simply made a box the form of a chest, with a cover, about four feet high.

926 Q. 17. Did you make an upper ice box at that time?

A. Yes, sir.

Q. 18. Describe that.

A. All there was to that box, it was filling in under the counter; the top of the bar formed the top of the box; it was simply filled, and then that he had lined with galvanized iron. Then there was another box; the top of that also right in under the counter; might have been a foot high or it might have been fourteen inches high, probably about twenty inches wide, and the depth was, of course, the depth of lower box below. He used that as a cupboard for vegetables. On the top of the box, which might have been twelve inches, in that he had three wood faucets right on the face of that, and top then was open; there was where he dropped his ice in to cool his beer.

Q. 19. State whether or not these faucets were connected with beer pipes running down to the lower ice box.

A. These pipes where those faucets were connected were lead pipe. They were coiled inside that box which was lined with galvanized iron or lead, and the three pipes were run down through the floor, connected with that ice box below and the beer kegs.

Q. 20. How long was the apparatus used as you have described it?

A. From 1877 to 1881.

Q. 21. Did you do any work on it during the years 1880 or 1881?

A. Yes; 1881, February.

Q. 22. What did you do?

A. Well, they tore out that apparatus—that was, Harvey tore it out. These faucets were off and the box was partly torn out, and I tore out the balance of it; the little box on top was taken out; the lower part of the box then I took out; then I spliced out that ice box, made it a little larger, extended it a little towards the bar counter; made it deep enough to take a keg of beer and raised it up about fourteen inches above the counter and made it so he could put a keg of beer on top; put it into the slide and shut it up. During this time he was drawing his beer from a beer keg lying on a saw buck behind the bar.

927 Q. 23. Do you know how long he had drawn beer from a keg on the saw buck?

A. As long as this work was in progress; probably about two weeks; then he put his beer into the ice box.

Q. 24. Do you know how long it was from the time Boehm ceased to use this apparatus until February, 1881, when you took it out?

A. That I don't know.

Q. 25. How do you fix the date when you took this apparatus out of Boehm's saloon?

A. I refer to my charges on my book, February 10th or 11th, 1881.

Mr. Selden offers to produce Mr. Mura's books.

Q. 26. In the apparatus which was put in Boehn's saloon in 1877 what arrangement was used for carrying away the water from the upper ice box?

A. A waste pipe—lead pipe.

Q. 27. Where did that pipe run—in the sewer?

A. Passed down through the floor of the saloon; yes, sir.

Q. 28. State whether or not there was in this device any connecting pipe or tube of any kind between the upper and lower ice boxes except the beer pipes.

A. There was no other connection except the beer pipes or little lead pipes.

Q. 29. How large was the hole through which the three beer pipes ran—the hole in the floor?

A. A small hole; an inch and a half or so.

Q. 30. Did you plug or stop up this hole at the time you put in the upper ice box, in February, 1881?

A. The same hole the waste pipe was through was used again, and the other hole I drove a plug in—drove a little pin or plug in it.

Q. 31. How many holes were there through the floor then?

A. Two.

Q. 32. What was the size of these two holes?

A. About an inch and a half or something thereabouts; small holes.

Q. 33. During the period between 1875 and 1881 were you a frequent visitor at Mr. Boehm's saloon?

A. Yes, sir.

928 Q. 34. How often were you in the habit of visiting the saloon?

A. Sometimes once a week, sometimes twice a week, as it happened; sometimes twice a day.

Q. 35 Did you at any time between 1875 and 1881 make any repairs to the bar in Boehm's saloon?

A. No; I didn't do anything to the bar from 1877; in 1875 built the bar and in 1877 put in the ice boxes and didn't do anything to it until 1881.

Q. 36. Did you during this time do any other work for Mr. Boehm?

A. Yes.

Q. 37. Did you do all the carpenter-work that he had occasion to have done?

A. I done all that he had done there; I done all from 1875 to 1881.

Q. 38. Did you do the work yourself in taking out this box in February, 1881?

A. I done that myself.

Q. 39. Was this lower ice box an air-tight box?

A. It was as tight as matched boards would make it; it was not packed with anything; it was two-inch matched plank.

Q. 40. State whether or not there was at any time in this apparatus a cold-air passage or connection between the upper and lower ice box.

A. No; no more than little lead pipes that ran to the beer kegs.

Q. 41. Do you know Ernst J. Schaub, the defendant's witness?

A. Yes.

Q. 42. Did you ever have any talk with him about this apparatus for drawing beer?

A. No.

Q. 43. During the period between 1875 and 1881 did you hear the cold-air passage between the ice boxes mentioned by any one?

A. No.

Q. 44. Would it have been possible that there could have been a cold-air passage between the ice boxes in this apparatus of Boehm's without your knowledge?

Mr. SULLIVAN objected as incompetent.

A. There wasn't any. If they had tried perhaps they could have got one for all I know, but there was none there. They could not have got one right straight, for it could not have run through the upper box, because the upper box was lying there and there
929 was ice in it, and that ice was to cool those coils, and there was no connection between the upper box and the box in the cellar, and below that was no ice box, simply a place to keep his vegetables—unless it ran up on the outside, and then it would have been exposed; could not have been concealed.

Cross-examined by Mr. SULLIVAN:

Q. 45. Then I understand you to say, Mr. Mura, that your connection with this ice box or this apparatus put in Mr. Boehm's saloon in 1877 was confined to your making the two ice boxes, one upstairs and one down-stairs? Is that correct?

A. Yes, sir; that is it.

Q. 46. You had nothing to do with the plumbing?

A. No.

Q. 47. Who put the plumbing in; do you know?

A. I could not say; not these pipes; that I don't know.

Q. 48. Did you see Mr. Schaub do any work there?

A. Yes, sir.

Q. 49. He did his work after you got through with yours.

A. The plumbing was put in after I got through; certainly.

Q. 50. Did you see Mr. Schaub working there?

A. Not at that; no.

Q. 51. And the work that you did on that apparatus was done in 1877, when you put in these two ice boxes, and again when you altered the upper ice box in 1881?

A. Yes, sir.

Q. 52. Your work on this apparatus in 1881 was confined to altering the upper ice box—you made it larger?

A. Yes; that is all.

Q. 53. Did you at that or any other time change the location of the upper ice box?

A. It was not changed—the location; no; it was only rebuilt; it was heightened.

Q. 54. The beer-supply pipes that you have described, they ran from the upper ice box down to and into the lower ice box and through this lower open space of the upper ice box, did they not?

A. No; they didn't run in there.

Q. 55. (Question repeated.)

A. Not through the floor of the lower space.

930 Q. 56. The lower part of this upper ice box was used for the purpose of storing meats, ginger ale, and such things?

A. Yes; that is right.

Q. 57. And it was really part of the upper ice box?

A. It was one combined box; it was one box divided off into compartments.

Q. 58. While putting in this lower ice box, did you notice how near to it the hot-air pipe ran?

Mr. SELDEN objected as not relative to the direct examination.

Q. 59. Did you notice a hot-air pipe in the cellar; furnace pipe, by which the house was heated?

A. I could not say.

Q. 60. You didn't notice a pipe at all?

A. There were furnace pipes, but where I could not say; I didn't pay any attention.

Q. 61. Did Mr. Boehm tell you why he took out this old apparatus and went back to drawing beer from the keg?

A. He said that he could not use that apparatus; it got smutty.

Q. 62. Did he say anything about his customers finding fault about beer being too foamy?

A. He didn't say anything about that.

Q. 63. Or that his customers objected to drawing beer by air pressure?

A. Heard nothing of that kind.

Q. 64. Did you at any time see this pipe which Mr. Schaub put in this apparatus for Mr. Boehm?

Mr. SELDEN objected on the ground that witness had already testified that there was no pipe connecting the ice boxes.

A. There was no pipe there except the little lead pipes.

Q. 65. That is all the pipes you ever saw?

A. Yes, sir.

Q. 66. Did you see this wooden pipe that was put in by Mr. Kleinhanz?

A. No.

Q. 67. Do you know Mr. Kleinhanz?

A. Yes, sir; he was the bartender.

Q. 68. He was tending bar at Mr. Boehm's at that time?

A. Yes, sir.

931 Q. 69. Was he tending bar at the time you put in this apparatus in 1877, do you know?

A. No; I think he had another there.

Q. 70. Mr. Kleinhanz has attended bar for some time, has he not?

A. He was there two or three times; he had different ones there.

Q. 71. Was Mr. Kleinhanz a carpenter?

A. Yes, sir.

Q. 72. Did Mr. Kleinhanz say anything to you at any time about having made a wooden pipe for this apparatus?

A. No; I had no conversation in regard to building the bar; never.

Q. 73. Of course, what he did and what you didn't see you cannot testify to?

A. No.

Q. 74. Who requested you to testify in this case, Mr. Mura?

A. Mr. Magin.

Q. 75. When?

A. I have got a subpœna; that I could not really say.

Q. 76. Cannot you give the date?

A. I can show you the subpœna. It was last week some time, anyway.

Q. 77. You have talked with plaintiff's counsel about this case. Did you talk with Mr. Selden?

Mr. SELDEN objected as immaterial.

A. Have talked, but didn't amount to anything.

Q. 78. When did you have this conversation with Mr. Selden?

A. That I could not tell.

Q. 79. How many conversations have you had with him?

A. One.

Q. 80. Where?

A. In his office.

Q. 81. Who was present?

A. That I cannot tell you; I don't know. There were some parties there, but who they were I could not say except Mr. Magin; that is all I could recognize.

Q. 82. How long were you discussing this matter with Mr. Selden and Mr. Magin?

Mr. SELDEN objected.

A. It was not half an hour; no more than that. Mr. Magin found out that I done the carpenter-work there; who told him I
932 could not say. He asked me if I done the carpenter-work for Boehm and I said yes and told him what I done.

Q. 83. And after that you came with Mr. Magin to Mr. Selden's office?

A. Yes.

Redirect examination:

Q. 84. Have you any interest, direct or indirect, in this litigation?

A. No interest at all whatever. I wish I hadn't anything to do with it; am sorry that I knew anything about it; that I done that work; I would be money in. This is the fourth or fifth day I lose.

Q. 85. In your cross-examination you said you could not tell who did the plumbing on this Boehm apparatus. Did you see the apparatus after the plumbing was done?

A. Yes.

Q. 86. Repeatedly?

A. I saw it from time to time.

Q. 87. You said also that you did not see the wooden pipe put in by Kleinhanz?

A. There was none there; I couldn't see. Oh, no; I didn't see it. After I had finished that in 1881 I think I wasn't in Boehm's for nearly a year and a half or two years. Since 1882 I was not there up to this day even.

Q. 88. In saying you didn't see a wooden pipe put in by Kleinhanz, did you mean to be understood as testifying that there was a wooden pipe in this apparatus between 1877 and 1881?

A. No; there was no pipe there at all. When I took the thing away there was nothing there.

By Mr. SULLIVAN:

Q. 89. When you say you saw this apparatus several times between the years 1877 and 1881, did you mean to be understood by that you saw that portion of it down-stairs, of course?

A. I saw it down — cellar, because I did work there.

Q. 90. You did the work on the apparatus between 1887 and 1881, you say?

A. I done the work on the apparatus in 1877 and then again in 1881; that is the only work I done there concerning this bar; that is all. I have been through the house frequently, of course.

DOMINICK MURA.

Adjourned to 2 o'clock p. m.

Read, subscribed, and sworn to before me March 10, 1885.

ADELBERT CRONISE,
Notary Public & Special Ex.

933 BENSWANGER SAMUEL, sworn for the plaintiff and examined by Mr. SELDEN:

Q. 1. What is your occupation?

A. Book-keeper for the Bartholomay Brewing Company.

Q. 2. Have you compiled upon the books of the Bartholomay Brewing Company a statement of the number of barrels of beer purchased by John Boehm from your company during the years 1875 to 1881, inclusive?

A. I have.

Q. 3. Will you please produce such statement?

Statement produced, offered in evidence, and marked Plaintiff's Exhibit "Boehm Account."

Q. 4. Does this statement show all the beer purchased by Mr. Boehm of your company during these years?

A. It does—that is, purchased and paid for. Some was purchased and returned as bad.

Q. 5. You have deducted the beer returned?

A. Yes, sir.

Q. 6. How did you make up this statement?

A. By taking the total for months, then adding the months together and taking it for years and adding the sum of years until I had the term of years.

Q. 7. In your statement you have reduced the fractional to whole barrels?

A. Yes, sir.

Cross-examined by Mr. SULLIVAN:

Q. 8. You were not Mr. Bartholomay's book-keeper during the years named on this statement, from 1875 to 1881, inclusive?

A. No, sir.

Q. 9. So all you know by is from what appears on the books of the company?

A. Yes, sir.

Q. 10. You do not know whether Mr. Boehm purchased beer from other brewers or not?

A. No, sir.

It is stipulated that the examiner may sign the witness' deposition.

SAMUEL BENSWANGER.

Adjourned to Saturday, March 7, 1885, 10 o'clock a. m.

934 MARCH 10TH, 1885—11 o'clock, a. m.

BUSH, CHAS., sworn, and examined by Mr. SELDEN:

Q. 1. What is your age, residence, and occupation?

A. Age, fifty-two years; occupation, carpenter and joiner by profession; residence, Rochester.

Q. 2. Were you acquainted with John Boehm, saloon-keeper, corner North St. Paul and Franklin streets, Rochester?

A. I was.

Q. 3. Did you at any time visit Boehm's saloon for the purpose of examining the floor therein? And, if so, give the date of your visit.

A. I did, sir, on November the 24th, 1882; also November 26th, 1882. I examined the floor, the under side of it, in the cellar.

Q. 4. State whether or not you found any openings or holes through the floor in the said saloon at that time; and, if so, give the number and size of the said holes, and state the location thereof relatively to the bar counter.

A. I found two holes very nearly under the middle of the counter as near as I can calculate from the looks of the counter above and where I was below; one hole, I think, was about an inch and a

half; not to exceed an inch and a half; another, a short distance from that, not over an inch hole.

Q. 5. State whether or not you made a careful examination of the floor in the said saloon.

A. I did, sir.

Q. 6. State whether or not you found any other openings or holes in the said floor than those which you have mentioned.

A. I did not; only the hole where I went down-stairs.

Q. 7. State whether or not the floor presented the appearance of having been repaired or altered at any time.

A. It did not; it all looked alike to me.

Q. 8. Were either of the holes in the floor that you have mentioned plugged or otherwise closed?

A. No, sir.

Q. 9. State whether or not there was an ice box in the cellar below the saloon.

A. Yes, sir.

Q. 10. What was its size and shape?

935 A. I think it was about ten feet long, about four feet wide, and about three feet or three feet and a half high.

Q. 11. Can you state what apparatus Boehm was using at this time for drawing beer?

A. He had a small ice box, ice refrigerator, with a keg in it. He drew it from a keg.

Q. 12. Was he using an air pump in connection with the beer keg?

A. He was; yes, sir; at least he said he was. I didn't examine it.

Cross-examined by Mr. SULLIVAN:

Q. 13. At whose request did you look for those holes in the floor of this saloon?

Mr. Selden objected as immaterial.

A. Of Geo. B. Selden.

Q. 14. That is plaintiff's counsel?

A. Yes, sir.

Q. 15. Had you visited this saloon before that?

A. Yes, sir.

Q. 16. You don't live in that vicinity, do you?

A. No, sir.

Q. 17. Where did you live at that time?

A. 85 South Washington street.

Q. 18. That is the other side of the river from where Mr. Boehm's saloon is?

Mr. Selden objected as immaterial.

A. Yes, sir.

Q. 19. You had not known Mr. Boehm before this to speak to him?

A. Yes, sir; I had been there several times for ten or twelve years.

Q. 20. You never did any carpenter-work for Mr. Boehm?
A. No, sir.
Q. 21. Who went down cellar with you on the occasion of this first visit of yours?
A. The first time Mr. Boehm and a man by the name of John Burgess, who went there with me, and Mr. Boehm went down cellar with us.
Q. 22. Who is Mr. Burgess?

Mr. Selden objected as immaterial.

936 A. A man who keeps saloon on West Main street.
Q. 23. Did he accompany you there?
A. He did, sir.
Q. 24. At whose request?
A. By my request.
Q. 25. How did you come to get Mr. Burgess to go with you?

Mr. Selden objected as immaterial.

A. I asked him to go along.
Q. 26. For what purpose?
A. To look at John Boehm's apparatus, &c.
Q. 27. Was that also under the suggestion of plaintiff's counsel?
A. No, sir.
Q. 28. You have been doing some work for Mr. Gordon or Mr. Magin on this apparatus?

Mr. Selden objected as before.

A. I have.
Q. 29. For whom; Mr. Magin or Mr. Gordon?
A. Mr. Magin.
Q. 30. Have you also done work for Mr. Gordon?
A. Well, not direct. I haven't been employed by him to do any work.
Q. 31. What do you mean by not direct?
A. By his authorizing me to do it.
Q. 32. Did you do any work in any way, direct or indirect?
A. I looked for some evidence for Mr. Gordon and Mr. Magin.
Q. 33. Who spoke to you about that?
A. Mr. Selden.
Q. 34. Mr. George Selden?
A. Yes, sir.
Q. 35. When was that?
A. (Witness refers to his book.) That was on the 23d of November, 1882, I commenced.
Q. 36. You have continued from time to time up to the present time?
A. No, sir.
Q. 37. What did you do in regard to looking up evidence?
A. I done the same as any man would that wanted to find some evidence—go around and look for it.
Q. 38. What did you do?

A. Visited John Boehm's saloon.

937 Q. 39. Where else?

A. I visited a good part of the saloons in the city.

Q. 40. After you visited Mr. Boehm's saloon or before?

A. After.

Q. 41. Mr. Boehm's was the first?

A. Mr. Boehm's was the first I visited for this purpose.

Q. 42. How many saloons do you think you visited besides Mr. Boehm's?

A. Oh, probably fifteen or twenty.

Q. 43. What was the occasion of your visiting those saloons, Mr. Bush?

A. Some of them was to go in and get a glass of beer, and some of them was to see somebody.

Q. 44. About this apparatus?

A. Not particuiarly.

Q. 45. What did you go in to see them about?

A. About my own business; nothing concerning this.

Q. 46. Did you say anything to any of them about this apparatus?

A. I have talked with some saloon-keepers.

Q. 47. Whom did you talk with about this apparatus?

A. Well, I could not name them.

Q. 48. Name a few of them.

A. I talked with McKay, Forrest, and Burgess, and I don't know—a number of them.

Q. 49. Can you name some others?

A. I don't know; I suppose I could if I should sit and think for half an hour and if I knew the names.

Q. 50. You talked with quite a number of other saloon-keepers whose names you cannot now give?

A. Oh, I could give them if I—there are several in saloons; bartenders I talked with; I don't know the names.

Q. 51. Can you give the names of any of the other saloon-keepers?

A. Oh, yes.

Q. 52. State some of them.

A. There is Stuvenhaver.

Q. 53. Who else?

A. I talked with Swikehard & Hondorf.

938 Q. 54 Have you given the names of all the saloon-keepers you have talked with?

A. All I can think of just now.

Q. 55. You have continued to put in those apparatuses for Mr. Magin?

A. No, sir.

Q. 56. Have you worked on them?

A. No, sir.

Q. 57. What work did you do for Mr. Magin?

A. I looked up some testimony for Mr. Magin.

Q. 58. That all?

A. Yes, sir.

Q. 59. For which he paid you afterwards, I suppose?

A. I don't generally do work that way; I get my pay as I go along.

Q. 60. I suppose he has paid you?

A. Yes, sir.

Q. 61. Does he pay you by the day or so much for the job?

A. Which would you rather I would say?

Q. 62. It is immaterial to me.

A. Paid me by the day; yes, sir.

Q. 63. How much per day did he pay you?

A. I could not tell you without I had my book here that I keep the memoranda in.

Q. 64. Can you not now state an approximate amount?

A. No; it has been a good while——

Q. 65. You have a book containing the memoranda of the charges you made against him?

A. Yes, sir.

Q. 66. Will you produce that book to-morrow?

A. I don't know whether I can or not; I suppose I have it among some other books.

Q. 67. When did you last see it?

A. I guess not in a year or two; a year and a half, anyway.

Q. 68. Do you recollect what it amounted to?

A. I do not.

Q. 69. You say you are a carpenter by trade?

A. Yes, sir.

Q. 70. Have you examined any of the apparatuses put in by Mr. Magin?

A. Not to make a close examination.

Q. 71. You have seen them, have you?

A. Yes, sir.

Q. 72. Where?

—. At Powers' hotel and one at Mr. Magin's place, and I have seen one in Swikehard & Hondorf's.

939 Q. 73. You understand the general construction, I suppose?

A. No, sir; I haven't looked at these much; seen them—seen them when I was putting them in.

Q. 74. You are familiar with how they are constructed?

A. Well, I think I am; yes, sir.

Q. 75. You have known Mr. Magin for some time, have you?

A. I have; yes, sir.

Q. 76. How long have you known him?

A. I have known him for the last ten years, I think; about that.

Q. 77. Have you done carpenter-work for Mr. Magin?

A. No, sir,

Q. 78. What time in the day was it that you visited Mr. Boehm's saloon on the occasion of your inspecting the apparatus?

A. The first day, in the afternoon.

Q. 79. Mr. Burgess with you on that occasion?

A. Yes, sir.
Q. 80. How long did you remain there that time?
A. Oh, probably an hour.
Q. 81. And after leaving there you reported the results of your investigation to Mr. Magin, did you, or Mr. Selden?
A. Mr. Selden, I think.
Q. 82. Mr. Magin with you?
A. No, sir.
Q. 83. When did you speak to Mr. Magin?

Mr. Selden objected as immaterial.

A. Might have been two or three days or a week; I didn't make a memorandum.
Q. 84. Did you tell Mr. Gordon?
A. No, sir.
Q. 85. You visited Mr. Boehm's saloon after that time, did you?
A. Yes, sir.
Q. 86. How long after?
A. Two days.
Q. 87. At whose request did you go there the second time?
A. George B. Selden's.
Q. 88. Mr. Magin with you that time?
A. No, sir.
Q. 89. Mr. Burgess?
A. No, sir.
Q. 90. You went alone, did you?
A. No, sir.
Q. 91. Who went with you?
A. Charles Colwell.
Q. 92. How long did you remain there that time?
A. Probably half or three-quarters of an hour.
940 Q. 93. And you inspected the apparatus with Mr. Colwell that day, did you?
A. I inspected the floor.
Q. 94. With Mr. Colwell?
A. Yes, sir.
Q. 95. You didn't inspect the apparatus that time?
A. No; I don't think we did—no more than we could see of it standing at the bar and drinking a glass of beer or two.
Q. 96. On the second occasion did you go down cellar?
A. Yes, sir.
Q. 97. Who went down with you?
A. His bartender.
Q. 98. Mr. Kleinhanz?
A. Yes, sir; Mr. Boehm told him to go with us.
Q. 99. Did you also report the result of that visit to Mr. Selden and Mr. Magin?
A. Mr. Selden; yes, sir.
Q. 100. Was it after or before this time that Mr. Magin made arrangements with you for looking up his evidence?
A. Before.

Q. 101. That is, you inspected Mr. Boehm's saloon after Mr. Magin requested you to look up evidence?

A. Yes, sir.

Q. 102. Can you not now state, Mr. Bush, about the amount Mr. Magin was to pay you by the day?

A. I cannot.

Q. 103. Cannot you give an approximate amount?

A. Somewhere from one dollar to a hundred dollars.

Q. 104. Is that the amount by the day?

A. No, sir; all that he paid me.

Q. 105. That is as near as you can state it?

A. Just as near as I would without knowing. I don't like to state what I don't know.

Q. 106. Did you receive any money from Mr. Gordon?

A. No, sir.

Q. 107. All the money you received from Mr. Magin?

A. Yes, sir.

Q. 108. On the occasion of your examination of this apparatus did you go inside the bar upstairs?

A. Yes, sir.

941 Q. 109. And while in there did you examine this upper ice box?

A. There is nothing but a refrigerator. There is no ice box.

Q. 110. There was no ice box? It was a refrigerator in which was placed this keg of beer?

A. Yes, sir.

Q. 111. In other words, they were drawing beer from the keg?

A. Yes, sir; with a faucet.

Q. 112. So you didn't notice the ice box upstairs, if there was any?

A. Nothing. He showed me what he was drawing from and told me he had an air pump.

Q. 113. You didn't look into the refrigerator?

A. Yes, sir.

Q. 114. Did Mr. Boehm say anything to you about having changed the construction of this apparatus?

Mr. Selden objected as immaterial.

A. He did.

Q. 115. While down cellar, did you notice a hot-air pipe?

A. A hot-air pipe? What do you mean by that?

Q. 116. I mean a hot-air pipe connected with the furnace.

A. I did not.

Q. 117. Mr. Boehm was not drawing beer from the ice box in the cellar on the occasion of your visit here?

A. No, sir—that is, I looked into the box. I didn't see any beer in it.

Q. 118. You say the only holes that you discovered in the floor on the occasion of your visit there was the two holes you have just described?

A. Yes, sir; that is all.

Redirect examination:

Q. 119. Have you now or have you had at any time any interest, direct or indirect, in the result of these suits?

A. No, sir.

Q. 120. Where is Charles Colwell now?

A. I could not say. I think he is somewhere in Ponnsylvania. I understood that he was.

Q. 121. How did you conduct the examination of the floor in Boehm's saloon?

Mr. Sullivan objected as going over what has already been testified to.

942 A. I stood up on the ice box in the cellar and lit matches and looked all around among the timbers on the under side of the floor.

Q. 122. And in this way examined all the floor underneath the bar counter?

A. Yes, sir.

Q. 123. How do you fix the dates of your visits?

A. By a memorandum book.

CHARLES BUSH.

Adjourned to 11 o'clock, March 11th, 1885.

Read, subscribed, and sworn to by deponent before me March 11, 1885.

ADELBERT CRONISE,
Special Ex. and Notary Public.

MARCH 11TH, 1885—11 o'clock a. m.

MAGIN, MICHAEL, sworn and examined by Mr. SELDEN:

Q. 1. What is your age, residence, and occupation?

A. My age is thirty-nine, and I live on the northeast corner of Andrews and water streets, and keep a saloon and restaurant.

Q. 2. Are you the plaintiff in these suits?

A. I am; yes, sir.

Q. 3. Are you the owner of the Gordon patent in the State of New York?

Mr. Sullivan objected.

A. Yes, sir.

Q. 4. Do you know James E. McKay, the defendant in one of these suits?

A. I know him slightly; yes, sir.

Q. 5. Did you at any time visit his saloon in company with the witness Millington?

A. I did.

Q. 6. What was the date of this visit?

A. It was some time prior or previous to the commencement of these suits; some time in May, 1882.

Q. 7. Did you at that time examine the apparatus for drawing and cooling beer which McKay was using in his saloon?

A. I did; yes, sir.

Q. 8. Describe the arrangement of the ice boxes in that apparatus of McKay's.

A. I was invited behind the bar counter by the bartender of Mr. McKay. I first asked the bartender what that was. He told
943 me it was a beer machine. I then asked him whether it was good for anything——

Mr. Sullivan objected to any conversation witness had with bartender.

A. He told me it was first class; that the last glass of beer drawn through the apparatus was equal to the first. I then asked him if there was any objection to my looking at it. He said, Certainly not, and invited me around behind the counter. He opened the cover to the upper ice box. I then called Mr. Millington, and I reached into the box and separated the broken ice, which was about one-half or two-thirds full of broken ice. I saw a hole in the bottom of the upper ice box and the beer pipes leading from the faucets into that hole in the bottom of the upper ice box. I then saw directly opposite the hole in the upper ice box a soil pipe which I should think was somewhere in the neighborhood of three and one-half or four inches in diameter, and to all appearances from the bar-room it passed through a hole in the floor underneath the counter. We then went down — cellar to look at a Fox pump. I didn't spend any time there because I didn't like the pump. I then walked towards the lower ice box in the cellar and asked the clerk or bartender of Mr. McKay whether they kept their beer in that box. He said said they did and he would show me. He opened the door and we walked into the ice box. After entering the ice box I saw the end of the soil pipe and the beer pipes running through the soil pipe. I put my hand opposite the hole in the soil pipe and felt the cold air coming down the pipe along the beer-supply pipes; I also felt some cold water dripping onto my hand. I then asked the bartender if that soil pipe ran up from the inside of the ceiling of the lower ice box to the bottom of the upper ice box and he said it did. We then walked up to the back of the bar-room, tasted some of the beer out of the apparatus, and then we left.

Q. 9. How did this apparatus which you saw in McKay's saloon compare with the beer-cooler which you had in use at that
944 time in your own saloon?

A. To all outside appearances it looked similar to mine, except there was no jacketed faucet, and instead of a non-conducting jacket surrounding the cold-air passage they used a soil pipe.

Q. 10. Did you hear the testimony of Mr. Gordon?

A. I did.

Q. 11. Are the facts stated by Mr. Gordon with reference to the introduction of this invention into your saloon in 1879 substantially correct?

A. They are; yes, sir.

Q. 12. Has this apparatus continued to be used by you in your saloon since that time?

A. It has; yes, sir.

Q. 13. Have you also placed similar apparatuses in the saloons kept by other parties? And, if so, state briefly the facts connected with such introduction.

A. I have put in several of them. I could tell better by referring to a copy which I made, as to the number of apparatuses I have put in.

Q. 14. Please refer to your memoranda and give the facts.

—. (Witness refers to memoranda.) Albert Milo.

Q. 15. Is this the first you put in?

A. Yes, sir; Mrs. M. Dolanty, William Erler, Matthews & Servis, S. Leiders, Christian Muehl, Swikehard & Hondorf, Frank Kehrig, M. Doll, Buffalo; George E. Fry, Erie, Pa.; Charles Cogal, Rochester; Edward Appel, Rochester; H. Bartholomay, Rochester; Eureka Club, Rochester; John M. Davy, Buffalo; William Carney, Buffalo. These were all put in in 1882. In 1883: T. W. Hawkins, Geneva; George Bussey, Rochester; Powers' hotel, Rochester; Martin Maloy, William Powers, Theodore Zinck, Ithaca. I have put in one more that I have no memoranda of. I have also memoranda of those reserved by Mr. Gordon. That is all.

Q. 16. Were either McKay or Welker reserved by Mr. Gordon?

A. No, sir.

Q. 17. What kind of a beer apparatus did you have in
945 your saloon before Mr. Gordon introduced this invention there?

A. I merely had a lower ice box in the cellar, and the beer-supply pipes ran upwards from the lower ice box through the floor and to the top of the working board—what we call the working board. There was no protection around the pipe any further than it was wound with hair felt.

Q. 18. Who put this apparatus in for you?

A. Mr. Joseph Wolf.

Q. 19. Before commencing these suits did you issue a circular to the saloon-keepers of Rochester and vicinity?

A. I did.

Q. 20. Can you produce that circular?

A. Yes, sir.

Circular produced, offered in evidence, and marked Plaintiff's Exhibit Magin's Circular.

Q. 21. Did you notify Mr. McKay that you intended to sue him for infringement unless he would settle with you?

A. I did.

Q. 22. What reply did McKay make to you?

A. I first wrote a letter to Mr. McKay. Mr. McKay came to my place of business and told me that he had received my letter. I told him I was very glad he did, because the letter called for fifty dollars for me. He then told me that he didn't have my patent or the Gordon patent; that the Gordon patent called for a double pipe

filled with resin, and he didn't have it. I then told him that I saw what he had, and he had fifty dollars' worth. I then showed him a list of several parties which I called upon that refused to pay, and told Mr. McKay that I should commence suit against them on Monday morning, and if he didn't pay his name would be on the list. He then told me that I should leave his name off the list; that he didn't know whether he could pay me on Monday, but he would certainly do so on Tuesday. I told him that if he promised to pay on Tuesday I would leave his name off the list. He didn't come on Tuesday. I went over to his place of business on Wednesday; asked him the reason why he didn't come and settle. He told me
946 that the saloon-keepers had a meeting and he thought they would fight the patent. I then asked him what his intention was; whether he meant to pay or to fight. He answered me by saying that under the circumstances he thought he would not pay. I then told him that under those circumstances I should commence suit against him before I went back home; that I would just go up to Mr. Selden's and commence the suit, which I did.

Q. 23. Did you know the defendant Welker before the commencement of this suit against him?

A. I saw Mr. Welker once only.

Q. 24. When was that?

A. This was prior to the commencement of these suits.

Q. 25. Did he say anything to you at that time about having had a license from Gordon?

A. He did not.

Q. 26. Did you ever see the apparatus alleged to have been used by John Boehm in his saloon, on the corner of North St. Paul and Franklin streets?

A. Not to my knowledge.

Q. 27. Do you know who the members are of this defensive association?

A. I do not.

Q. 28. Don't know any of the officers of this association?

A. I don't know any more than from hearsay.

Q. 29. Do you understand the construction of the copper coolers which are alleged by Mr. Shaub to have been employed in the apparatus used by John Boehm?

A. I have seen some of those copper coolers; those which I saw were about, I should say, from fourteen to sixteen inches in length, or thereabouts, and perhaps two inches in diameter.

Q. 30. As a person having practical experience in the use of devices for drawing and cooling beer will you please state whether or not there are any practical objections to the use of such coolers as you have mentioned?

A. I think there are. In the first place, the beer standing in those copper coolers and being in contact with the ice becomes chilled and gives the beer a smoky appearance when drawn; it is not clear, a
947 muddy look to the beer; another objection is that the beer standing over night in those coolers would become flat and it would have to be wasted, thrown away in the morning,

and another objection is that it is impossible to keep those coolers clean; they are filthy. Another one is that if there is a rapid demand for beer the beer is not sufficiently cooled just by running through the little cooler; it is of different temperature, which is detrimental to the taste of the beer.

Q. 31. Does beer when confined under pressure deposit a sediment?

A. It does.

Q. 32. What is the character of this sediment?

A. It is of a yellowish cast; it adheres to the cooler; it would adhere to the cooler; it does adhere to the pipe.

Q. 33. Can it be removed from the pipes?

A. It can be removed from straight pipes.

Q. 34. Do you know of any means by which it could be removed from a cooler such as you have mentioned?

A. No, sir; I do not of any. It cannot be removed from a cooler.

Q. 35. How do you clean the pipes in your device?

A. I use sal soda dissolved in water.

Q. 36. What effect does that have upon the sediment adhering to the pipe?

A. It softens the sediment adhering to the pipe, and then applying the water pressure, the pipe being straight, forces out that sediment.

Q. 37. Do you know of any saloons in which these copper coolers are used at present?

A. I do not.

Q. 38. Did you make any complaint to Mr. Wolf about the device which he put in your saloon?

A. I did.

Q. 39. What did you say to him about it?

Mr. Sullivan objected.

A. After the apparatus was completed I commenced drawing beer; I found that the first glass drawn from the apparatus would all come up in a thick, heavy foam, and I then went to Mr. Wolf and asked him the reasons why this machine acted in that way; he told me that they all done so; that his was the same way, and he would draw up a glass of beer and throw it in a measure and sell it by the quart. He thought I could do the same, but I could not stand it.

948 Q. 40. Have you received any complaints from parties who are now using the Gordon invention as put in by you?

A. I have not, any more than once in awhile the beer pump stops.

Q. 41. Under what pressure do you supply the beer to the faucets?

A. It is different pressures, according to the depth of the cellars; I use from ten to twelve pounds.

Q. 42. Of air pressure?

A. Yes, sir.

Q. 43. Do you know the defendants' witness, Schaub?

A. I do.

Q. 44. Do you know whether he has put into any saloons any beer-cooling device which infringes the Gordon patent?

Mr. Sullivan objected.

A. I know of a saloon where he has put in one, but when I saw it it was not completed; further than that I cannot say any more.

Q. 45. Has the organization of this association to contest the Gordon patent been a serious injury and damage to you in your efforts to introduce the Gordon invention?

Mr. Sullivan objected on the ground that there is no evidence in the case to warrant the question asked.

Mr. Selden refers to the testimony of Eugene Welker, on pages 142 and 143 of Defendants' Record.

A. They have to a great extent. In several cases they have refused to pay the patent money until these suits were decided. I therefore concluded to lay still until these suits were decided, and I have not put in any apparatuses since a year ago last October on those grounds.

Q. 46. Have you during all this time had a considerable amount of material on hand?

A. I have to the amount of two thousand dollars.

Adjourned to 2 o'clock p. m.

2 O'CLOCK P. M.

MAGIN, MICHAEL, recalled and further examined by Mr. SELDEN:

949 Q. 47. Do you use ice in the lower ice box in your beer-cooling device during the entire year?

A. I do not; no, sir.

Q. 48. During what portion of the year do you find it necessary to use ice in the lower box?

A. During the hottest summer season. I do not use any ice from about December until the middle of May.

Q. 49. Do you use ice in the upper box all the time?

A. Not during the coldest weather; I do when the weather is warm, changeable, but when the weather is cold, say from December until May, I do not use any in the upper ice box, only once in awhile for a day or so.

Q. 50. The construction of your apparatus, then, with a cold-air passage between the upper and lower ice boxes enables you to effect a considerable economy in the amount of ice used annually?

A. It does; yes, sir.

Q. 51. Can you give an estimate of the value of the ice which would be saved annually by the use of such a device as yours over what would be necessary in a beer-cooling device without the cold-air passage?

A. I think the beer-cooling device with a cold-air passage would—there would be a saving at least of fifty dollars a year, if ice was worth twenty-five cents a hundred.

Q. 52. Your estimate is based on an apparatus containing how many faucets?

A. Well, six or four; it doesn't matter so much; the difference in the number of *of* faucets would not amount to a great deal.

Cross-examined by Mr. SULLIVAN:

Q. 53. The saving in ice, then, would depend largely upon the quantity of ice a person used under the old system, would it not?

Mr. Selden objected as indefinite unless Mr. Sullivan explain what is meant by the "old system."

A. I do not know what you mean by the old system.

Q. 54. The system used for drawing beer where they dispense with the cold-air passage which you claim in your apparatus. Now, do you understand what is meant by the old system?

A. I do.

950 Q. 55. (Question repeated.)

A. It would; you can use ice to excess in either case.

Q. 56. Did you make any change in this apparatus of yours since you first put it in?

A. Do you mean since 1879?

Q. 57. I mean the apparatus which you put in under the Gordon patent.

A. I have changed the location of the cooler and added more faucets. The first apparatus I only had two faucets and the increase of my business called for more faucets.

Q. 58. Now, before putting in this apparatus which you are now using, what kind of an apparatus did you use?

A. I used the cold-air passage and I had filled faucets, but I had a sort of a receiver for the ice, a double galvanized-iron receiver packed with hair felt.

Q. 59. Who put that apparatus in for you?

A. Mr. Gordon.

Q. 60. When was that put in?

A. In 1879.

Q. 61. When in 1879?

A. About June, I think; June, 1879.

Q. 62. And you continued using that for how long?

A. I continued using that very nearly two years, I think.

Q. 63. Up to some time in 1881?

A. Some time in 1881.

Q. 64. When you put in the apparatus you are now using?

A. Yes, sir.

Q. 65. The apparatus you put in your saloon in 1879 was substantially the same as the one you put in in 1881, which you now use, except it didn't have the filled pipe?

A. It had the filled pipe; it embodied the cold-air passage and the filled pipe.

Q. 66. It embodied the cold-air passage and the filled pipe—that is, the apparatus you put in in 1879?

A. Yes, sir.

Q. 67. And wherein did that apparatus differ from the one you put in in 1881?

A. It differed in the number of faucets. I had a filled faucet, but it was differently constructed. Those that were first con-
951 structed ran up through the working board, which formed the top of the upper ice box.

Q. 68. Did the first apparatus you put in have the non-conducting jackets surrounding the supply pipes the same as the apparatus you put in in 1881 had?

A. The first apparatus that Mr. Gordon put in for me in 1879 did have the jacketed pipe surrounding the cold-air passage and the supply pipes; yes, sir.

Q. 69. Did you have the supply pipes at that time wrapped up in hair felt?

A. Not after Mr. Gordon had put in the apparatus.

Q. 70. When you constructed this apparatus put in in 1879 were the supply pipes surrounded with hair felt or did you use the hair-felt wrapping before the one you put in in 1879?

A. The hair felt was used in the one that Wolf put in about four or five or six weeks previous to the one that Gordon put in.

Q. 71. And that apparatus did not have the cold-air passage through it?

A. It did not in the one that Mr. Wolf put in.

Q. 72. Did that apparatus have a filled faucet?

A. The one that Joe Wolf put in; no, sir.

Q. 73. Then the first time you used the filled faucet was the time Mr. Gordon put one in in 1879?

A. Yes, sir.

Q. 74. At that time, at the time Joe Wolf put in this apparatus for you, how many faucets were you using?

A. Two only.

Q. 75. You drew your beer from the cellar then as you do now?

A. Yes, sir.

Q. 76. How long had you been drawing beer in that way?

A. With the two faucets?

Q. 77. Yes.

A. I continued from 1879 to 1881; two years or thereabouts.

Q. 78. Then you didn't change the construction of the Wolf apparatus except to put in this jacketed pipe?

A. I did change the construction of the Wolf apparatus; took away the hair felt—that is, I didn't do it; Mr. Gordon did—
952 and supplied the double pipe surrounding the beer-supply pipes.

Q. 79. And then you continued the apparatus—you had been using the apparatus so constructed up to 1881?

A. Yes, sir.

Q. 80. Up to the time you put in the apparatus you now use?

A. Yes, sir.

Q. 81. During that time, from 1879 to 1881, did you hear any of your customers find fault with the quality of beer you were drawing?

A. I did from the Wolf apparatus; not after the Gordon apparatus was put in.

Q. 82. Not after putting in the Gordon apparatus?

A. No, sir.

Q. 83. Who did you hear find fault about the beer while you were using the Wolf apparatus?

Mr. Selden objected as immaterial.

A. The biggest part of my customers—I could not name them all—found fault with its foaming and being too warm. When I drew a glass of beer it was all foam.

Q. 84. Can you name one of your customers?

Mr. Selden objected as before.

A. Frank Stewart, for instance.

Q. 85. Who else?

Same objection.

A. Well, there was quite a lot of them, but the time elapsed has been so long it would take time to think of them all.

Q. 86. Well, take time.

Mr. Selden objected as before.

A. Mr. Gordon, for instance.

Q. 87. By Mr. Gordon you mean the gentleman from whom you obtained an interest in this patent?

A. Yes, sir; I do.

Q. 88. Who else, or can you recall no more at present?

A. William Gifford.

Q. 89. Prior to putting in the Wolf apparatus how did you draw your beer?

Mr. Selden objected as immaterial.

953 A. I drew it directly from the keg.

Q. 90. Who first suggested the idea of making a change in the Wolf apparatus?

Mr. Selden objected as immaterial.

A. I first told my trouble to Mr. Charles Gordon. I told Mr. Gordon that I didn't know but that I had to go back to first principles—that is, drawing beer from the keg; that I had something in this apparatus which I could not overcome; that customers continually found fault. I could not draw the beer, as it was all foam. The only time that I could draw beer was during noon hour; and Mr. Gordon then told me that he knew of a device which would overcome my trouble. I then asked Mr. Gordon what his charges would be for said device. He told me he would put it in, I think, for fifteen dollars, and I paid Mr. Gordon the money and he completed the device.

Q. 91. That is the first Gordon device that you put in?

A. Yes, sir.

Q. 92. That was in 1879?

A. Yes, sir.

Q. 93. Did he inspect this Wolf apparatus at the time—Mr. Gordon?

A. I could not say; not to my knowledge.

Q. 94. Had you spoken to Mr. Bartholomay about constructing an apparatus for you?

Mr. Selden objected as immaterial.

A. Mr. Bartholomay was the first gentleman that advised me to draw beer under pressure.

Q. 95. Which Mr. Bartholomay?

A. Mr. Henry Bartholomay, of the Bartholomay Brewing Company.

Q. 96. When was that?

A. This was in 1879.

Q. 97. Was this before you put in the Wolf apparatus?

A. At the same time.

Q. 98. Was it at Mr. Bartholomay's suggestion that you put in the Wolf apparatus?

A. It was.

Q. 99. Who told you to use hair felt around the supply pipes?

A. Mr. Bartholomay.

954 Q. 100. Any one else?

A. Mr. Bartholomay was the first and only one to my knowledge.

Q. 101. Did his son, Philip Bartholomay, speak to you at any time about it, so that you can state when and what he said?

A. Mr. Philip Bartholomay did not say anything to me about hair felt at the time of the Wolf apparatus being put in.

Q. 102. There was a time when you and Philip Bartholomay had a talk about one of the apparatuses you put in your saloon?

Mr. Selden objected as immaterial.

A. I had my apparatus, I had this Wolf apparatus, in a long time before the—I don't remember having any talk with Philip Bartholomay regarding my Wolf apparatus.

Q. 103. (Question repeated.)

A. No, sir; there was not; any more than Mr. Philip Bartholomay drew the plans for the lower ice box.

Q. 104. Which lower ice box was that?

A. It was the one used in connection with the Wolf apparatus. Mr. Philip Bartholomay drew the plans.

Q. 105. Did Mr. Henry Bartholomay suggest to you any improvement in the apparatus that Mr. Wolf put in for you?

Mr. Selden objected as immaterial and on the further ground that no such defense was set up in answer.

A. All Mr. Henry Bartholomay suggested to me was the winding of the beer pipes with hair felt, which I found did not answer the purpose.

Q. 106. You say that in the use of the Wolf apparatus the beer was foamy and at times warm?

A. Yes, sir.

Q. 107. What caused the foam?

A. I think the foam was caused by the beer being forced up from a cold temperature in the lower ice box through the beer-supply pipes, which were not protected by a cold-air passage, and the non-conducting jacket surrounding the cold-air passage.

955 Q. 108. That, in your judgment, is the cause of the foam?

A. Yes, sir; beer is excited when it comes from a cold temperature into a warmer one.

Q. 109. Would it be also agitated in coming from a warm temature to a colder temperature?

A. The change would be almost *vice versa;* it would have a more tendency to deaden it; neither of the changes, either from the cold to the warm or from the warm to the cold is beneficial.

Q. 110. Hasn't it been your experience that in the use of one of those apparatuses in the saloons that they are almost continuously in use for drawing beer?

A. Those under the Gordon patent are; I have known some of the others to be taken out?

Q. 111. While you used the Wolf apparatus in your saloon wasn't the beer flowing through these supply pipes almost continuously?

A. They were not; only at noon and six o'clock in the evening.

Q. 112. Those are the hours at which you do the most business?

A. Yes, sir.

Q. 113. Your saloon is so situated that your customers are chiefly from the working men?

Mr Selden objected as immaterial.

A. I have all classes of customers—lawyers, mechanics, clergymen, &c.

Q. 114. Isn't it a fact that your trade consists chiefly of mechanics and laboring men who work in shops adjacent to your place of business?

Mr. Selden objected as immaterial.

A. I have a great amount of laboring men, perhaps the greater part of my custom, although I have a class of custom that are good judges of good beer.

Q. 115. Your saloon is situated near the boot and shoe factories of the city and in the center part of the manufacturing establishments of our city, is it not?

Mr. Selden objected as immaterial.

956 A. It is situated in a manufacturing locality; not all shoemakers; there are clothiers and other business men in the neighborhood.

Q. 116. When did you say you visited McKay's saloon?

A. Previous to the commencement of these suits.

Q. 117. What year was that?

A. 1882.

Q. 118. Did you on that occasion go behind the bar in McKay's saloon?

A. I did; by invitation of his clerk.

Q. 119. And also visited the cellar under a like invitation, did you?

A. Yes, sir.

Q. 120. Was the upper ice box in this apparatus you have spoken of lined?

Mr. Selden objected as immaterial.

A. I think it was.

Q. 121. Did you notice any joints in this pipe leading from the upper to the lower ice box surrounding the supply pipes?

Mr. Selden objected as immaterial.

A. I did not.

Q. 122. Do you know how this soil pipe was fastened to the upper ice box?

Mr. Selden objected as immaterial.

A. I did not stoop down to see how it was fastened or connected. I merely ran my hand along the soil pipe on the outside of the soil pipe up to the bottom of the upper ice box and I didn't feel any joints. It was run close up to the bottom of the upper ice box. I think if there were any joints there I should have detected them.

Redirect examination:

Q. 123. At what temperature should the beer be delivered to the faucets in order to present it in the most palatable condition?

Mr. Sullivan objected on the ground that the witness is not shown to be competent.

957 A. It depends somewhat on the outside temperature. In real hot weather during summer about 42 Fahrenheit and in colder weather about anywhere from 45 to 48.

MICHAEL MAGIN.

Adjourned to 11 o'clock a. m., March 12th, 1885.

Read, subscribed, and sworn to before me March 12, 1885.

ADELBERT CRONISE,
Special Examiner and Notary Public.

958 Circuit Court of the United States, Northern District of New York. In Equity.

MICHAEL MAGIN
vs.
EUGENE WELKER.

MICHAEL MAGIN
vs.
JAMES D. MCKAY.

MICHAEL MAGIN
vs.
CAMILLE FOREST.

Depositions of witnesses examined on behalf of the above-named defendants, pursuant to the stipulation and notice hereto annexed, at the office of C. D. Kiehel, No. 37 Powers building, Rochester, New York, on Wednesday, December 20th, 1882, 10 a. m.

Present: George B. Selden, Esq., appeared on behalf of the above-— plaintiff and Josiah Sullivan, Esq., appeared on behalf of the above-named defendants.

959 ERNEST J. SCHAUB, being duly sworn, doth depose and say in answer to interrogations proposed to him by his counsel, JOSIAH SULLIVAN, Esq., as follows, to wit:

1 Q. What is your name, age, residence, and occupation?

A. My name is Ernest J. Schaub; my age is 42 years; my residence is 53 Clifford street, Rochester, N. Y.; my occupation is a tinsmith and a plumber.

2 Q. How long have you lived in Rochester?

A. In 1868, on the 22d day of May, I came to Rochester.

Q. And have you continued residing since that time and working at your trade of tinsmith and plumber?

A. Yes, sir.

4 Q. Are you at present engaged in the same business, and have you a store on West Main street, in this city?

A. Yes, sir; No. 226 West Main street.

960 5 Q. Have you at any time put in any apparatus or device for drawing and cooling beer?

A. Yes, sir.

6 Q. You may state when and where.

A. It was for Mr. John Boehm, on the corner of Franklin and St. Paul streets, in Rochester.

7 Q. When did you put in that apparatus?

A. About seven years ago, right after the block was built that he now occupies on the corner of Franklin and St. Paul streets. This block was and is used as a saloon and dwelling-house by Mr. Boehm; never had anything else in it.

8 Q. Will you please describe device you put in — Mr. Boehm?

A. He built an ice box close up to the counter—connected with the counter—two feet wide, two feet and a half deep, and three feet

high, which I lined on the inside with charcoal dust and galvanized iron. He built another ice box down in the cellar about six feet high and about eight feet wide each way; was built double and filled out with sawdust—that is, between the scantling. I lined the bottom of it about two feet high and put in a waste pipe which was connected with the sewer. The ice box in the cellar was about two feet lower than the ceiling, so I connected it with a pipe from the upper box, which was of an oval shape about six inches wide—about six inches by four inches. This pipe I connected with the lower ice box on top through the ceiling of the ice box and put a wooden pipe, a square wooden pipe, over that to make it perfectly air-tight—five inches by five inches on the inside. I connected it with the upper ice box so that the cold air from the upper ice box dropped down into the lower ice box and the waste ice water ran down into the same pipe on top of the beer kegs. Mr. Kleinhanz, the carpenter, did the wood-work of the box after my in-
961 structions. The upper pipe was soldiered into the upper ice box; the pipe was about three inches above the bottom of the box; the pipe ran that high in the box. The pipe ran into the lower ice box about two feet, so that I could catch the ice water on the top of the beer kegs. The beer pipes ran from the faucet upstairs—there were three of them—and were connected with a copper cooler which was three inches in diameter and ten inches long, so that the copper coolers were lying three inches in the ice water. From them coolers I run them beer pipes, which were one-half inch in diameter on the inside—on the inside of the big pipe and connected them with the beer keg and ale barrels in the ice box in the cellar, so that the cold air and the waste water could strike the pipes easily. The ice water and cold air should run down from the upper ice box into the lower—it did run down. The coolers I put in for that purpose in the winter time, when he did not want to buy much ice, that he only would have to keep ice in the upper box. The large pipe was about from six to seven feet long. It was about two feet from the ceiling of the ice box in the cellar to the ceiling of the cellar. From the ceiling of the ice box in the cellar to the ceiling of the cellar I had a wooden pipe five by five inches on the inside so as to make it perfectly air-tight. The height from the ceiling of the cellar to the upper ice box was from 18 inches to two feet; the length of the galvenized iron pipe was about three feet and the length of the tight wooden pipe was about five feet long. The iron pipe ran into the wooden pipe about 18 inches. It was packed with charcoal and brown paint on the inside so as to be perfectly air-tight and hold water. The pump I bought of Mr. Wolf. I saw in the "Metal Worker," our business paper, that those pumps were for sale in the city of New York, and I wrote down and I couldn't get none, and they wrote back that I should go to
962 Mr. Wolf and speak to him about that, so Mr. Boehm and me went down and we bought a pump there and I went and put it up, and this was about the same time I put in the apparatus—a day or so after. I regulated the pump down between seven and eight pounds of pressure of atmospheric air, which I pumped in a

larger pipe in the lower ice box; this one was connected with rubber hose—rubber tubing, you may call it—about one-fourth of an inch on the inside—one-fourth of an inch bore—and was connected on the top of the beer kegs and ale barrels, and the pressure on top of the beer forced it through the pipes into the saloon.

9 Q. Can you make a drawing of the device you have just described? And, if so, proceed to do it and mark it by letters and figures with description.

A. I can and will do so.

(The witness makes sketch and produces the same. The same is introduced in evidence, and marked Defendants' "Exhibit Schaub Sketch," C. D. K., notary public.)

10 Q. Describe your sketch.

A. "A" was a large ice box in the cellar; "B" is the small ice box in the saloon; "C" is the beer barrels in the lower ice box in the cellar; "D" is the large air pipe; "E" is the large connection pipe from the upper to the lower ice box; "F" is the beer pipes connected with the beer barrels passing through to that cold-air pipe "E;" "G" is the beer-coolers; "H" is the beer faucet connected with the coolers; "I" is the guage which shows the pressure; "J" is the air pump; "K" is the door to the lower ice box in the cellar; "L" is the cover to the upper ice box; "M" is the rubber tubing which connects the beer barrels and the air pipe on top; "N" is the faucet in the kegs; "O" is the floor in the saloon.

11 Q. How long was that device used by Mr. Boehm?

963 A. About four years.

12 Q. Did you do any repairs to this device during that time? And, if so, state what you did.

A. Sometimes they broke the pipe off and I soldered it together. I would send a man down to solder them together and charged for it, too, and sometimes I would fix the pump on top and clean it out.

13 Q. What was this device used for by Mr. Boehm?

A. For cooling beer, that's all, and for drawing the beer from the barrels in the lower ice box into the saloon.

14 Q. Besides the apparatus that you put up in Mr. Boehm's did you put up any other? And, if so, you may state where.

A. Mr. Geiring was the next one I put up; it was in Rochester; then, afterwards, I took it out and put it up in Penfield. For this one I used a hand air pump to work with a lever. I also put up one for John Rusch; he built an ice box in the cellar. This was a cheap one. I also put up one for Mr. Bauerschmidt; he had no ice box in the cellar. This was used with a hand pump, too; this was a cheap one, too. He was going to put an ice box in the cellar, but was uncertain, as he did not know whether he would stay in the store. I also worked with Mr. Gordon where he put one in. It was at Mr. Farquhar's. I did some part of the work on that. It was about one year ago last summer.

15 Q. Had you seen any apparatus or device similar to this be-

fore you put it in Mr. Boehm's? And, if so, you may state when and where.

A. About twenty-two years ago I saw the first one in the city of Berlin, in Germany.

(Auswer objected to on the ground that an alleged prior use in a foreign country is incompetent and immaterial and inadmissable under the pleadings.)

964 16 Q. How did you come to see it then?

(Objection renewed on the same grounds.)

A. I was working at my trade of tinsmith and plumbing. Once in awhile I had a chance to work on them and so I studied them over carefully—studied the principle of them. They put them on the top of the counters there and make them of silver-plated urns, and make them about 2½ feet in diameter. They use them for the upper ice boxes to connect them with the lower ice box in the cellar, just the same as we do here.

(The answer is objected to on the same ground.)

17 Q. How long after you came to this country was it that you commenced to put in these apparatuses?

A. About nine years.

18 Q. What year did you come to this country?

A. On the 22d day of May, 1868, right after the Paris exhibition. I *saw* there.

(The last part of the answer objected to on the same ground.)

19 Q. About when did you put this apparatus into John Rusch's saloon and Mr. Geiring's?

19 Q. About when did you put this apparatus into John Rusch's saloon and also into Mr. Geiring's?

A. In John Rusch's I put in about a year after I put Mr. Boehm's in and Mr. Gering's I put in about the same time I put in Mr. Boehm's. Mr. Bauerschmidt's I put in about five years ago; some parts of it is the same as it was there. His ice box did not stand on the counter; it went clear down to the floor. Galvanized-iron pipes were those what went through the floor where the other pipes run through. The galvanized-iron pipe is two inches by four inches and twelve inches long. It was made like that; that if he ever builds an ice box in the cellar that the cold air should circulate down to the lower ice box. The one I put up for Mr. Rusch was the same as Mr.

965 Bauersmidt's. The pipe was galvanized iron and about eight inches long. The upper ice box was built down to the floor. The ceiling of the cellar he used for the ceiling of the ice box. The galvanized pipe was two by four inches inside. It was oval shape. It run into the lower ice box about two or three inches and into the upper ice box three inches above the bottom. Mr. Geiring's was constructed the same as Mr. Boehm's. Mr. Geiring had no galvanized-iron pipes; he had no large pipe. The beer pipe went right through the cellar to the beer cask. I told him I would fix it differ-

ent as soon — he would build the ice box; that I could not fix the pipe, as I did not know the height. I took out what I put up for him in Rochester and put it up in Penfield, and there I put the large pipes in to run the small ones through down into the cellar. I told him to build an ice box all round, but I cannot tell whether he did or not.

20 Q. When you put this apparatus into Mr. Boehm's saloon did you say anything about showing it to people?

A. Yes, sir; I asked him whether he would be kind enough to show to person whoever wants one made, and to those who were interested to see it, and in the case that I ever get some more put in places, and he agreed to do so because he liked the working part of it, and he thought the beer keeps better in that than any one he ever saw before.

21 Q. I see on your drawing, "Defendants' Exhibit Schaub Sketch," that you have marked what you call "beer-cooler" letter "G." Would you please state what was the object of placing those "coolers," or, more properly, reservoirs, in the bottom of the upper ice box?

A. To cover them up with pieces of ice so that the cold air should strike on the pipes and cool the beer in the coolers in case that he got no ice in the lower ice box. That was calculated for use
966 in the winter; not so much for the summer; ice had to be kept in the lower as well as in the upper ice box in summer.

22 Q. About how much beer would those "beer-coolers" contain?

A. They were made to contain exactly two quarts. They were three inches in diameter and ten inches long.

23 Q. What was the object of having coolers placed there containing about two quarts of beer?

A. In the case that he ain't got no ice in the lower ice box, so that he always has cold beer on hand.

24 Q. In beer being drawn from barrel "C" would it pass through pipes "F" and coolers "G" and pipes "P" and faucets "H"?

A. It would.

25 Q. Have you at any time had a conversation with the plaintiff in this action? And, if so, state when and what was said.

A. About eight weeks ago, one day in front of the Arcade, I asked Mr. Magin whatever he owned of a patent right on this beer apparatus or what his patent right was for, and he said, I will take you up to my attorney's office, in the Arcade, and I will show you what my patent right calls for, and he showed me a cut or drawing up there, which I looked over carefully and found out that I made them seven years ago in this country—just the same; I told him so. It was exactly so, except that the inside pipe ran three inches up from the bottom of the upper ice box. I mean the large galvanized-iron pipe when I say the inside pipe. Mr. Magin said, I know that I have nothing but an old thing on hand, but I only want to be sure that I own a patent or not. I told him afterwards that I saw them 25 years ago in Germany, and afterwards we went

over across the road and had a glass of beer, and I went home afterwards.

967 (Question and answer objected to as incompetent and immaterial.)

26 Q. If you had a conversation at any other time you may also state that one.

(Same objection.)

A. One night I stopped in Mr. Magin's place to intend to get some information in regard to the patent. I told him that — had to go to the law with that and that I was sorry that I had to fight against him. He stated that he knows it, but that it is too bad. The same time that I was talking to him Mr. Gordon came in, and he put different questions to me. He asked for whom I made the first one, where I saw them first, and afterwards he stated that when it comes to the end I didn't know anything at all. I felt kind a insulted and left the store. I told him, Mr. Gordon, that I made the first one for Mr. John Boehm; that I saw them before in the city of Berlin; that's what I answered to him. Mr. Magin was present at this conversation. Mr. Magin told me in German that he knows that he got an old thing, and I stated to him that if he had come to me before he bought the patent right I would instructed him different. Then Mr. Gordon told me when it comes to the point that I don't know nothing about it. I felt insulted by that and left the store.

(Answer objected to as entirely incompetent and immaterial, and all testimony on the subject of alleged prior knowledge of the invention claimed in the Gordon patent in any foreign country is objected to as incompetent and inadmissable.)

27 Q. Did any person or persons, and, if so, you state how many and when, call at your place of business and had a talk with you in regard to this Gordon patent?

(Objected to as incompetent and immaterial.)

968 A. Two persons came there and wanted information of the apparatus, and told me or advised me not to make any statements in that case when it comes before the law, for they would make me sweat for that. I asked the man for a name, but I couldn't get it out of him. He slammed the door and said, I guess $100 would stuff my mouth; that's all. Some came in and wanted to talk with me about it, but I wouldn't give no answer to it.

(Answer objected to as incompetent and immaterial.)

28 Q. I want you, Mr. Schaub, to give the whole talk you had with them—that is, as to how they came to your place and what they said about making you sweat for it.

(Same objection.)

A. I couldn't tell what they meant by making me sweat.

(The answer objected to on the same ground.)

29 Q. Did you know where those gentlemen came from and who they were?

A. No, sir; I asked them twice for their name, but they would not give any name.

(Same objection as before to question and answer.)

30 Q. Have you seen those gentlemen since that time?

A. No, sir.

(Defendant- produces Plaintiff's Exhibit Model of the Gordon patent.)

31 Q. Look at this model and state wherein it differs, if at all, from the device you put in John Boehm's saloon.

A. It is the same except that I did not have that shelf for the ice in the lower ice box. This pipe (pointing to the large pipe
969 form the upper down to the lower ice box) I put in this corner here (pointing on the right-hand side of the smaller ice box in the saloon); itwas soldered three inches above the bottom of the small ice box in the saloon, and was made of an oval shape and soldered in air-tight. I put a wooden casing around the outside of the large galvanized-iron pipe and connected that with the lower ice box through the ceiling of the ice box in the cellar, so that the cold air and waste water could pass through easily. I did not use the metal faucets that appear on this model at John Boehm's; I used wooden faucets. The upper ice box was placed on the left-hand side of the counter, not in the middle, as shown in this model. The kegs were lying just the same as here in the model—as it is lying on the rack. The large pipe came through right above the kegs, so that the cold air and ice water strikes the kegs.

Adjourned to Tuesday, January 2d, 1883, 10 a. m.

JANUARY 2, 1883—10 a. m.

Parties appeared as before and witness continued.

Cross-examination:

32 X Q. What was your occupation between the time you arrived in this country and the time you say you put in this beer-cooling apparatus for Mr. Boehm?

A. Tinsmith and plumber. Five and a half years I worked for Mr. James H. Kelly—lamp works. After that I worked a year and a half for Mr. Cunningham—Cunningham's carriage factory; made carriage lamps.

33 X Q. What was the first job you did after you came to this country?

A. Tinsmith.

34 X Q. What was the first tinsmith-work you did after you came to this country?

970 A. For Mr. Kelly. I worked a couple of weeks on the fire-pot and then on the lathe and did brass spinning and turning.

35 X Q. What was the next work you did for Mr. Kelly after you got through with the brass-spinning?

A. I started a shop for Mr. Cunningham to manufacture carriage lamps

36 X Q. What year was it when you left Kelly's?

A. I think it was in the year 1874, in the fall some time.

37 X Q. How long did you work for Mr. Cunningham?

A. About a year and a half—for $4.50 wages a day.

38 X Q. In what capacity were you employed by Mr. Cunningham?

A. In making carriage lamps. I was foreman in my own shop at Cunningham's.

39 X Q. In what year did you leave Cunningham's?

A. In 1875.

40 X Q. What did you do next?

A. I went back and worked for Mr. Kelly at brass-spinning about one year for $5.50 a day.

41 X Q. When was it that you went to Kelly's the second time?

A. About the year after.

42 X Q. What was that you did after that?

A. I went in business for myself.

43 X Q. How did you get acquainted with Mr. Boehm?

A. He used to keep hotel opposite the old depot of the New York Central, where I took my board and occupied a room for sleeping purpose.

44 X Q. What year was it that you put in this device for Geiring?

A. In the year 1876. I think it was in 1876.

45 X Q. When did you put in Rusch's?

A. About a year after that.

971 46 X Q. How long had you been in business for yourself before you put in this device for Mr. Boehm?

A. About a year.

47 X Q. When was it that you put in Bauerschmidt's cooler and device?

A. About five years ago.

48 X Q. In what year?

A. I don't remember the year exactly no, more. I ain't got the books here.

49 X Q. Did Bauerschmidt have a lower ice box?

A. No, sir.

50 X Q. Did Mr. Rusch?

A. Yes, sir.

51 X Q. Where was Mr. Rusch's saloon at that time?

A. It was the same place where it stands to-day—corner Front and Mumford streets.

52 X Q. Do I understand that Geiring had a lower ice box?

A. I don't know. He didn't while he was in Rochester.

53 X Q. In answer to your 19th direct-ion you say, "Mr. Geiring's was constructed the same as Mr. Boehm's:" this statement is erroneous, then, so far as it relates to the lower ice box?

A. I told him to build one, but I don't know whether he did or not.

(Answer objected to as not being responsive and question repeated.)

A. It was the same up on top—in the saloon. Below it was just the same except the ice box. I don't know whether he built the ice box.

54 X Q. Whereabouts in the town of Penfield was this saloon of Geiring's?

972 A. I don't know the name of the street; in a tavern there. I went out there and put it up and a hand air pump.

55 X Q. Did you put up the large galvanized iron pipe for Mr. Geiring in Penfield?

A. Yes, sir.

56 X Q. That was a part of the apparatus you took from here out there?

A. Yes, sir.

57 X Q. How many beer faucets did Mr. Geiring have in Penfield in the upper ice box?

A. Three.

58 X Q. How long did Geiring use this thing in Rochester before he moved to Penfield?

A. I don't think it was quite a year.

59 X Q. He had, then, three of these copper coolers in his upper ice box?

A. I guess I put them in; I ain't quite sure whether I put them in or not.

60 X Q. What was the size and shape of the galvanized iron pipe in the apparatus you put in for Geiring in Rochester?

A. About four inches in diameter and about twelve inches long. It was not oval; it was round.

61 X Q. Where was Geiring's saloon located in Rochester?

A. Down here on Main street. We used to call it "Briggs' block."

62 X Q. Did the galvanized iron pipe in this saloon of Geiring's in Briggs' block run down through the floor of the saloon?

A. Yes, sir.

63 X Q. Did you do the work on this galvanized iron pipe yourself?

A. I suppose I did.

973 64 X Q. Did you cut the hole through the floor for it yourself?

A. I do not remember that.

65 X Q. Did this galvanized iron pipe run up above the bottom of the ice box in the saloon?

A. No, sir; it ran level with the bottom.

66 X Q. And was soldered in it?

A. Yes, sir.

67 X Q. Was it like Boehm's device in this respect?

A. Pretty near like it. It was higher—the upper ice box. The ice box in Geiring's was built down to the floor.

68 X Q. Then in Geiring's device there was a hole four inches in diameter in the bottom of the ice box in the saloon?

A. Yes, sir; where that four-inch pipe went through.

69 X Q. Was the ice box in Geiring's saloon lined?

A. Yes, sir; lined with zinc.

70 X Q. Were there any coolers in the ice box in Geiring's saloon?

A. I don't remember that any more: it is too long time.

71 X Q. Where was the ice put in this ice box in Geiring's saloon in Rochester?

A. On the bottom of the ice box. There were no shelves in the box.

72 X Q. What became of the drip from the ice?

A. I connected a waste pipe from that and run it into the sewer.

73 X Q. To what part of the ice box was this waste-pipe connection?

A. It was soldered in the bottom of the lining.

74 X Q. Was this galvanized iron pipe which ran down from the bottom of the ice box in Geiring's saloon closed or open?

974 A. It was open lik a piece of stone pipe. If it wasn't how could the other pipes go through it? The bottom of the ice box was a little slanting. In the lower part was the waste pipe and in the higher part was the galvanized iron pipe, where the beer pipes passed through.

75 X Q. What was the size of this ice box in Geiring's saloon in Rochester?

A. I don't remember no more how big it was; about 3 feet high; about 2½ feet wide, and about 2 or 2½ feet deep.

76 X Q. Where is Bauerschmidt's saloon?

A. On Front street; about five five or six doors from Exchange place.

77 X Q. Was Bauerschmidt's device like Geiring's?

A. It was not.

78 X Q. In what respects did it differ?

A. He had beer coolers in.

79 X Q. Is that the only difference?

A. No; it was placed on the side of the wall.

80 X Q. Any other difference?

A. It was made just like Mr. Boehm's on the top, but it worked by hand pump—hand air pump.

81 X Q. Was the device you say you put in for Mr. Rusch the same as the one you put in for Mr. Geiring?

A. It was not the same. It was constructed different. The working part was the same as the rest of them. I got the old one in the store yet—on hand yet. I mean Bauerschmidt's I have in my store—the old one.

82 X Q. How long since you took this apparatus of Bauerschmidt's out?

A. Three months ago.

83 X Q. What kind of an apparatus is Bauerschmidt using now for drawing beer?

A. He is using something like this one (pointing to Mr.
975 Gordon's model), except that there is a wooden casing or pipe over that large galvanized iron pipe, and I do not know whether they have an ice box in the cellar; I told her to build one. Mr. Bauerschmidt is dead about a year.

84 X Q. Who put this apparatus in for Mrs. Bauerschmidt?

A. I did.

85 X Q. Did you take a contract to do it?

A. Yes, sir, I did; at a certain price.

86 X Q. Have you got your pay for it?

A. Yes, sir; I did get my pay for it.

87 X Q. Did you have any talk with Mrs. Bauerschmidt about the Gordon patent?

A. Yes, sir. I told her that Mr. Magin claims a patent right on that; that I put it up in the same old style—the way I always done it.

88 X Q. Did you tell her she needn't be afraid of the patent?

A. I did.

89 X Q. Did you give her any guarantee against it?

A. Yes, sir; I did.

90 X Q. Did you put any coolers in the upper ice box in Mrs. Bauerschmidt's saloon?

A. No, sir.

91 X Q. Did you put any jacket around the galvanized iron pipe?

A. Yes, sir; I did, sir. It was of pine wood.

92 X Q. This jacket keeps the air from the outside pipe—keeps it cool?

A. Yes, sir.

93 X Q. What kind of faucets did you use in this new apparatus in the store of Mrs. Bauerschmidt?

A. Nickel-plated beer faucets.

94 X Q. Was there a jacket around these faucets?

A. No, sir.

976 95 X Q. Have you put in cooling apparatuses for any other parties than Mrs. Bauerschmidt during the last two years?

A. I don't know what you mean by that.

96 X Q. What part of the question is it that you don't understand?

A. Because the question ain't plain enough for me to understand it.

(Answer objected to as not responsive and question repeated.)

A. Cooling apparatus for what purpose do you mean?

97 X Q. Have you not been testifying all the morning about apparatuses for cooling beer?

A. No, sir; there is different apparatuses for this purpose which I have seen.

98 X Q. You haven't been testifying about any apparatus for cooling beer?

A. Yes, sir; about a good many.

99 X Q. Did you do work for Mr. Gordon on the cooling apparatus put in Mr. Farquahar's saloon?

A. Yes, sir.

100 X Q. Where is Farquahar's saloon located?

A. I guess 224 West Main street, Rochester, N. Y.

101 X Q. When was it that you worked on this Farquahar's job?

A. I don't remember exactly the date no more.

(Answer objected to as not responsive and question repeated.)

A. About a year ago. I don't know any more when it was; of course, I got my business in my head.

102 X Q. What work did you do on the Farquahar job?

A. I lined the lower ice box with galvanized iron, and then I connected all the beer pipes. I think that's all.

977 103 X Q. Did you line the upper ice box.

A. No, sir; I did not.

104 X Q. What did you mean by connecting the beer pipes?

A. I soldered the unions on and all work like that.

105 X Q. Did you do any work on the pump?

A. No, sir.

106 X Q. How long were you employed on this job of Farquahar's?

A. I do not know no more; couple hours some days, and some other days a couple of hours.

107 X Q. Did you furnish any of the metal-work?

A. Yes, sir; I did—the lining for the lower ice box—some lead pipe and some tin-lined pipe. I guess that was all.

108 X Q. Did you have any conversation with Mr. Gordon about this cooling apparatus?

A. Yes, sir; I told him that I always made them the same way as he does. I saw them 25 years ago in Germany.

(The last part of the answer objected to as incompetent and immaterial.)

109 X Q. Did you know at this time that Mr. Gordon had a patent on this cooling device?

A. Yes, sir; I found it out as I worked on it.

110 X Q. Did you have any conversation with Mr. Gordon about putting the same device in for other saloon-keepers?

A. I do not remember no more, but Mr. Gordon told me that in case he get some more to put up he would give me the job, because he says I am a very handy man to put up these apparatuses.

111 X Q. Did Mr. Gordon say anything to you about his going away from Rochester?

978 A. I do not know.

112 X Q. Did you not ask his permission to put the device in for other saloon-keepers?

A. No, sir.

113 X Q. Did you not tell Mr. Gordon that you would like to put in similar cooling devices for other saloon-keepers on commission?

A. No, sir.

Adjourned until 2 p. m.

114 X Q. This beer-cooling device which you put in for Mrs. Bauerschmidt was substantially like the one you worked on at Farquahar's saloon, was it not?

A. It was not so.

115 X Q. In what respect did it differ from the Farquahar device?

A. In the first place, I didn't use no faucets with casing over them; second, I did not fill it out with rosin, because I thought Mr. Gordon held his patent right on the rosin lining; and, third, I got a wooden pipe over the big galvanized iron pipe, just like Mr. Boehm's. That's the difference, and there is no ice box built in the cellar. I found it out this noon.

116 X Q. Have you been in the saloon to see whether there is a lower ice box there?

A. No, sir; not this noon.

117 X Q. Then how do you know?

A. Because I know it; that's all what's about it. If a person tries to put up a trap for me he cannot get a decent answer from me no more.

118 X Q. Did you not testify this morning that you did not know whether in the apparatus which Mrs. Bauerschmidt is now using for cooling beer there was an ice box in the cellar or not?

A. Yes, sir; I did testify it so.

979 119 X Q. And then if you have not been in Mrs. Bauerschmidt's saloon since this morning so as to see whether she has an ice box or not how do you know that she hain't got any?

A. I wasn't down there at all to-day, but I know that there is no ice box in the cellar.

120 X Q. But I ask you how do you know it?

A. That's my business. Put that down.

(Answer objected to as not responsive and question repeated.)

(Counsel for defendant requests counsel for plaintiff to ask questions and approach witness in such a manner as not to necessarily intimidate and excite the witness, who is a German by birth and not familiar with the English language, and the witness is requested to avoid becoming excited and to answer questions put to him by plaintiff's counsel in the same manner as he did this forenoon, irrespective of the changed manner of plaintiff's counsel in asking questions.)

(The plaintiff's solicitor states that he is not responsible for witness'*eses* peculiarities and he denies that he has made any effort whatever to intimidate the witness or that he has in any way changed the manner of examining the witness. The plaintiff's solicitor further states that he is exercising his privilege of cross-examination in a proper and orderly manner, and that he shall insist on the witness answering all proper questions which he may put.)

A. Now, since you have put the question into decent shape for me I will tell you. Last Saturday night I was down there in the store and I saw the carpenter which should build the ice box for

her and he told me that he ain't got no time for two or three weeks to commence it.

(Answer objected to as hearsay.)

980 121 X Q. How, then, did you "find it out this noon" that Mrs. Bauerschmidt had no lower ice box?

—. I met that carpenter and I talked the matter over with him.

122 X Q. Is the carpenter going to put in a lower ice — as soon as he gets time?

A. Yes, sir; he will put it in as soon as she got money and he got time to spare.

123 X Q. What is the carpenter's name?

A. I don't know.

124 X Q. Where did you meet him?

A. Down here on the four corners.

125 X Q. Do you know whether the carpenter has had a talk with Mrs. Bauerschmidt whether he should put an ice box in or not?

A. I suppose so, or else he couldn't tell me. He made the upper ice box.

126 X Q. Where is his carpenter shop?

A. I don't know; you have to go down and ask her. I saw him do work down there; that's all I know about it.

127 X Q. Since you worked for Mr. Gordon at Farquhar's have you put into any other saloons apparatuses for cooling beer like the one you put in for Mrs. Bauerschmidt?

A. No, sir; I did not.

128 X Q. Have you since that time put in any apparatus for cooling beer of any kind in any saloon?

A. No, sir; I never got a chance to put another one in, because Mr. Magin goes around to them parties all over and scare them by telling them if I put them up he will charge them $50 royalty on his patent.

129 X Q. How do you know that?

A. I have been told like that.

130 X Q. Who told you so?

981 A. Mr. Gilliard.

131 X Q. Anybody else?

A. Yes; but I don't remember any more; some more told me; I don't remember; I paid no attention to it.

132 X Q. Have you tried to get orders to put in this kind of device?

A. Yes, sir; I always do.

133 X Q. To what parties have you applied for orders?

(Objected to — the ground that the counsel is speaking of a device as "this" device, which does not convey to the witness a correct knowledge of the device he is speaking about, and the counsel for the plaintiff is requested to inform witness what he means by "this" device.)

(Question is waived.)

134 X Q. State the names of any parties to whom you ever ap-

plied, since you worked at Farquhar's saloon, for orders to put in a device substantially the same as that put in Farquhar's or the one you put in for Mrs. Bauerschmidt.

(Objected to on the ground that the question is incompetent, indefinite, and complicated.)

A. I will not do so, because it will not agree with my business. Then Mr. Gordon might go and talk to Mr. Magin, and could mention such persons' names wherever I could likely lose the job to put apparatus in for them. Mr. Gordon is present here. I mean that Mr. Magin may go to parties to whom I talked, and he, being a better talker than I, might put his apparatus in instead of me putting in mine.

135 X Q. You seem to feel hurt because Magin gets the orders and you do not.

A. Yes, sir; I do, because I put in the apparatus in first
982 seven years ago, and never thought that a patent right could be taken out of it, because they got it in Germany for twenty-five years or over.

(Testimony as to alleged prior use in a foreign country objected to as incompetent.)

136 X Q. You claim, then, you are the original inventor of this beer-cooling apparatus?

A. No, sir; I do not claim so.

137 X Q. So far as this country is concerned, you think you are the original inventor, do you not?

A. I don't understand that question.

138 X Q. Don't you claim that you have been the first to put in this beer-cooling device in Rochester?

A. Yes, sir. I put in the first one for Mr. John Boehm, so far as I know it.

139 X Q. Are any of the beer-cooling devices which you put in before you worked at Farquhar's saloon in use now, to your knowledge?

A. Some part of it; yes, sir.

140 X Q. Some parts of which one?

A. Of Bauerschmidt's and of John Boehm's. I don't know of any more.

141 X Q. What part of Bauerschmidt's device that you first put in remains in use there now?

A. Some of the pipes, the guage, some part of the galvanized lining, the lower beer faucets, the air-pressure pipe, and the boiler which holds the pressure. I think that's all.

142 X Q. What part of the apparatus that you put in Boehm's is being used there now?

A. The pump, the guage, and some pipes. That's all.

143 X Q. How long since has Mr. Boehm stopped the use of the apparatus which you say you put in for him?

A. About two years ago.

144 X Q. What kind of faucets did you put on Boehm's apparatus?

983 A. On the small ice box in the store I use wooden faucets.

145 X Q. How are these wooden faucets connected with the pipes?

A. I made a brass ferrule and brazed them in the seam with silver in the fire, and then I spun of German silver a round ornamental piece and soldered that over the large end of the ferrule. I got them nickeld-plated. Then I went and drove the wooden faucets into it perfectly air-tight and soldered the beer pipe into the ferrule.

146 X Q. What was the object of using these wooden faucets?

A. They were healthier in use.

147 X Q. Was it not the object also to make customers think that Boehm was drawing beer directly from the keg?

A. No, sir; because the wooden faucets were placed only four inches apart.

148 X Q. These wooden faucets were like the wooden ones ordinarily used on beer kegs at this time, were they not?

A. No, sir. I had them very small and fancy—made to order.

149 X Q. Who made them for you?

A. Mr. Schmidt, on Water street.

150 X Q. Was not this lower ice box which you worked on at Farquhar's the first you had ever lined all over the interior with sheet metal?

A. No, sir; it was not the first one.

151 X Q. Which was the first?

A. The first in my life in the city of Berlin, in Germany.

(Answer objected to by plaintiff's counsel as incompetent.)

984 152 X Q. Which was the first one in this country?

A. The first one was for Mr. John Boehm. It only was lined from one side, where the ice was placed, and the bottom of it to catch the ice water from the upper box and at the same time to catch the ice water in the lower box.

153 X Q. Did you make any mistake in lining Farquarhar's lower box?

A. The only mistake which I remember in lining that box was that Mr. Gordon told me I have too many nails in. That's all I remember—that is, in the side lining.

154 X Q. Didn't you put the nails in the wrong place?

A. Not that I know of.

155 X Q. Did you go over the work and solder the nail heads over?

A. Yes, sir; I had to do so. I had to work under Mr. Gordon's control.

156 X Q. Do you know what kind of a beer-cooling apparatus Rusch is now using in his saloon?

A. No, sir; I do not.

157 X Q. Don't you know that he has stopped using the beer-cooling apparatus that you say you put in for him?

A. Yes, sir; I do know it. They all stopped using it for quite

awhile, so far as I can recollect. There was only six or seven in use this time here in the city of Rochester, and the rest of the saloon-keepers which did not use them apparatuses went and ran them down to other folks where they use to trade, them folks, and told the customers that there is poison in the beer, because the beer ran through lead pipe and runs at the same time to the pump, so them parties told me that the working concern of them apparatuses is very good, but they got to stop the use of it, because their customers came into the saloon and reported how much they run the apparatus down; that them folks should not sell any more beer which had the apparatuses in.

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158 X Q. Can you give the name- of these saloon-keepers who run down your apparatus?

A. Yes, sir; I can. There is Mr. Gilliard. He was the worst man to talk about it. Then Mr. Mutchler, who died. He didn't have a saloon, but was a customer. Mr. Knebel, the architect, was an awful talker. Mr. Lieder ran it down awfully before you (pointing to Mr. Gordon) put one in, and a good many others which I don't remember any more. Mr. Farquahar ran it down before he had his in.

159 X Q. Can't you think of any other saloon-keeper who didn't like your apparatus?

(Objected to on the ground that the witness did not say they didn't like his apparatus, but they said their customers objected to having beer drawn through the lead pipes connected with the apparatus.)

A. No, sir.

160 X Q. Did any of these parties raise any objection to these copper coolers which you say you had in the upper ice box?

A. Not that I know; I never heard it. I put some in yet of them coolers, because they were lined inside with block tin.

161 X Q. How long is it since you put in any of these copper coolers?

A. Seven years. I have put them in in soda fountains, ale apparatuses, and porter apparatuses.

162 X Q. How long since you put in the last copper cooler?

A. You mean those beer apparatuses? That is seven years, just as I said before.

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163 X Q. How long was it after you put in this apparatus for Mr. Boehm, as you say, until he stopped using it?

A. I put it in about seven years ago, and he stopped using it about two and one-half years ago; something like that.

164 X Q. Seven years ago would be 1875?

A. Yes, sir.

(Complainant's solicitor states that when he asked the question above he had in mind it was still 1882. The witness states he thought so to-.)

165 X Q. Do you know whether Boehm used this apparatus continuously during this time?

A. Yes, sir; during this time which I stated.

166 X Q. Did you make any changes or alterations during this time?

A. No alterations or changes made during this time. I only kept it in repair because the beer pipes broke once in awhile.

167 X Q. The fact seems to be that your apparatus has now gone entirely out of use, being superseded by something better?

(Defendants' counsel objects to the question as incompetent, and that the counsel assumes that to be a fact which the evidence does not warrant.)

A. I ain't to blame for that; you, the counsel, ought to know yourself.

168 X Q. Had you done any work for Boehm before the time when you say you put in this beer-cooling apparatus?

A. Yes, I did; small orders which I cannot remember any more.

169 X Q. Have you done any work for him since the time he discontinued the use of your apparatus?

987 A. Yes, sir; I do all his work right along since I have been in business.

170 X Q. What have you done for him since he stopped using this beer-cooler?

A. I put in another one in a very simple, cheap manner.

171 X Q. Is that the apparatus he is using now?

A. Yes, sir.

172 X Q. Describe it.

A. He built a small ice box about four feet high and two and one-half feet wide and two feet deep, which I lined with galvanized iron, just big enough to put one keg beer in. The air pressure I run in from the side in the beer keg in such a shape that it cannot be seen by his customers, because they kicked against it.

173 X Q. Nothing shows on the outside of this ice box but the wooden faucet from the beer keg?

A. No, sir.

174 X Q. When did you put in this apparatus last mentioned?

A. About two and one-half years ago.

175 X Q. What is the height of the counter above the floor?

A. I do not know, because I never took the measure of it.

176 X Q. State, as near as you can, what the height of it is.

A. About three and one-half feet, or something like that.

Adjourned to Wednesday, January 3d, 1883, 10 a. m.

Adjourned to 2 p. m., same day, at request of defendants' counsel.

Adjourned to Friday, January 5th, 1883, 10 a. m.

Adjourned to Monday, January 8th, 1883, 10 a. m.

988 Adjourned to Thursday, January 18th, 1883, 10 a. m.

Adjourned to Thursday, February 1st, 1883, 10 a. m.

Adjourned to Friday, February 2d, 1883, 11 a. m.

Adjourned to Monday, February 12th, 1883, 7 p. m.

MONDAY, *February 12th*, 1883—7 p. m.

The parties appeared as before.

ERNEST J. SCHAUB, the witness, continued in his cross-examination.

177 X Q. Previous to your direct examination had you talked with a good many parties about the Gordon patent?

A. With Mr. Gordon himself, the owner of the patent.

178 X Q. With whom else did you talk about it?

A. I couldn't recollect that. I guess with nobody.

179 X Q. Did you talk with Mr. Wolf about it? I mean Mr. Joseph Wolf.

A. No, sir. I talked with him after the examination here—after the lawsuit was going on about it. As soon as Gordon sued saloon-keepers about Mr. Wolf sent for me and I went to his saloon; a short time before the examination here—about a week. I was sent for by Mr. Wolf on account of some business I had with him.

180 X Q. Whom else did you talk with besides Mr. Wolf?

A. I spoke to Mr. Farquahar about that the first time because Mr. Gordon told me he holds a patent right on them apparatus, so I intended to find out of Mr. Gordon what kind of patent right he holds on it. Mr. Gordon did not state it to me; he declared
989 he had the thing all sound and solid, and I asked Henry Farquahar whether he knows something about that and he declared that the whole thing was patented to Mr. Gordon. I told him that can't be so at all, because I seen them twenty-five years ago in a finer style than Mr. Gordon put them up.

(The latter part of the answer objected to by plaintiff's counsel as incompetent.)

181 X Q. Have you talked with Mr. Stuvenhaver about it?

A. Yes, sir; about a week ago. I was directed to him by another man.

182 X Q. Who was the other man?

A. That's more than I can tell. I don't know his name. I can't remember the name whoever directed me there.

183 X Q. Have you attended any of the meetings of the association of saloon-keepers who are carrying on the defense in this case?

(Question objected — on the ground of being incompetent, immaterial, and irrelevant, and on the further ground that there is no evidence in this case that the same is being carried on by saloon-keepers or any other kind of an association.)

A. I never attended to the association of saloon-keepers. I am no saloon-keeper, because I have got other associations to attend to without being a saloon-keeper.

184 X Q. How long did that beer-cooling apparatus which you say you put in for Mr. Rusch remain in use?

A. I suppose that was between two and three years in use.

185 X Q. How long is it since Mr. Rusch's apparatus was changed?

A. That is more than I can tell.

186 X Q. Have you talked with Mr. John Boehm about this matter since your direct examination?

990 A. Yes, sir.

187 X Q. What did you tell him about it?

A. I told him that I found out that Mr. Gordon and Magin holds a patent right on that apparatus which I put up for you, and I think that Mr. Gordon appeared in your store and seen the apparatus before, and maybe inquired of you whatever made it, and so he thought that I was a green German and he could make money out of it, and went to work and got the same apparatus patented which I made for you—this is for Mr. Boehm—and I seen Mr. Gordon in Henry Farquahar's and asked him about his patent right, but he wouldn't state to me how he got the patent right, whatever he claims he got patented on it; besides, Mr. Boehm stated that Mr. Gordon is in the ale business, and he should think that he comes out in a good many places in the saloon line where he easily could find the latest improvements out.

188 X Q. Is this all the conversation you had with Boehm?

A. I told him that Mr. Sullivan informed me that they may be called for witness to him in the Gordon lawsuit, or else in the Gordon and Magin lawsuit, and Mr. Boehm stated to me if they ever should call on him in a lawful manner he will appear, and tell him only what he had and nothing more—that is what he stated.

189 X Q. Did you have a talk with Mr. Boehm about the old apparatus that was thrown out?

(Objected to on the ground that there is no evidence that this old apparatus was thrown out.)

A. Thrown out; no; I took it out—I never saw Mr. Boehm throw it out the way the question is. I took it out.

190 X Q. When you took that old apparatus out and you put in the new, the one that Boehm is using now, did you make any change in the counter in the saloon?

991 A. I would like to know what you mean by the new apparatus.

191 X Q. The question explains it—the one that Boehm is using now?

A. The question does not explain anything of the kind, because he is not using any kind of apparatus at all now, and the old apparatus are removed about two years ago—from one to two years ago.

192 X Q. How is Boehm drawing his beer now?

A. He draws through a wooden faucet into a tumbler, and from this they draw into their throats.

193 X Q. Does he use any apparatus to produce any air pressure?

A. Maybe he is using the old pump yet, which I don't know for sure, because I think the pump was out of order, as he stated to me some time ago. I can't remember that time any more.

194 X Q. When you put in the device he is now using did you make any change in the bar counter?

A. No, sir; I got a new one made last week like Mr. Boehm's,

but it is not quite finished, and if the man who put up the question would come down to the shop and see it, so I think he will find out that this one is made the very same way as Mr. Boehm's.

195 X Q. You mean like the one that Mr. Boehm is now using?

A. No, sir; I do not.

196 X Q. What do you mean, then?

A. I was talking about the one which I removed from Mr. Boehm's store; that Mr. Boehm told me I should put *put* the very same one up again—about the spring, he says—because there are no saloon-keepers who run the apparatus down now—they all make use of it.

992 197 X Q. Are there any saloon-keepers in this city who are now using the apparatus like the one you took from Mr. Boehm's?

A. Yes, sir; good many of them—pretty near the whole of them.

198 X Q. Does the new ice box—the one Boehm is using now—stand in the same place in his saloon as the old one that you took out?

A. Yes, sir; in the very same place.

199 X Q. Did you do the carpenter-work on the new ice box—the one Boehm is using now?

A. How can I do any carpenter-work? I am a tinsmith and plumber by trade. I can never learn the carpenter trade.

200 X Q. Who did that?

A. That I can never tell.

201 X Q. You know who did the carpenter-work on the old device in Mr. Boehm's saloon—the one you say you took out?

A. Yes, sir; some part Mr. Kleinhanz.

202 X Q. Where is he now?

A. He is tending bar for Mr. Boehm; he ran the wooden pipe from the upper box down through the ceiling into the lower ice box and I put my galvanized-iron pipe through this one and tightened it so that the cold air and water had to pass through it, as it shows here in this cut (pointing to defendants' Schaub sketch).

203 X Q. How did you make the joint tight between the wooden pipe and the iron pipe?

A. I soldered the large galvanized-iron pipe into the upper box, which was oval in shape, and shoved the wooden pipe right over that which was connected through the ceiling of the lower ice box, and I filled the space up with charcoal dust in such a shape that the warm air could not strike the galvanized-iron pipe.

993 204 X Q. Did the galvanized-iron pipe run below the level of the floor in the saloon?

A. Yes; of course it did; it shows in the cut (referring to "Schaub's sketch").

205 X Q. When you were talking with Mrs. Bauerschmidt about the cooling apparatus you put in for her did you not promise her that you would make it like Sauerteig's and like Farquahar's?

A. Yes, sir; I did, because I never seen them made in another shape in Germany or else-here.

(The last part of this answer objected to as incompetent and irresponsive by plaintiff's counsel.)

Redirect examination resumed:

206 —. In answer to cross-question 82, which reads as follows: "How long since you took this apparatus out?" you answered, "About three months ago." Which apparatus had you reference to? Was it the one you first put in for Mr. Bauerschmidt or some other one?

A. I took Bauerschmidt's out about three to four months ago now; yes.

207 Q. The latter part of the question repeated.

A. That's what I stated. I took Mr. Bauerschmidt's out about three to four months ago now—it shows the place yet where I took it out, and the large hole is through the floor yet where that large pipe went through.

208 Q. Was that the first apparatus you put in for Mr. Bauerschmidt?

A. Yes, sir.

209 Q. How long did Mr. Bauerschmidt continue using it?

A. About five years.

210 Q. What was the occasion of your taking that apparatus out and putting in another one?

A. Because the old apparatus was working with a hand air
994 pump. I moved the apparatus from one store to another—this was before I took it out—and then I worked it over after that and made a new one out of it, and this was about three months ago.

211 Q. Is there any difference in the apparatus which is now in Mr. Bauerschmidt's saloon and the one you put in his saloon about five years ago?

A. All the difference I see into it is I am using now an air pump which runs by water pressure in the place of having the old one, which ran by hand pressure.

212 Q. There has been something said by you in your testimony about putting in an apparatus for Mr. Rusch in this city. Would you please describe what kind of apparatus that was?

(Objected to on the ground that it is improper redirect examination.)

A. The apparatus was put up cheaper than the rest of them—where those three beer pipes passed outside of the upper ice box through the floor into the lower ice box; of course, I could not put the large galvanized pipe into it, because I struck a heavy beam, so I put a small tin pipe through and put the three beer through one hole; that's about all. I explained the thing before; the rest was pretty much like the sketch I made in this matter.

213 Q. What was the length of this large galvanized-iron pipe in the apparatus you put up for Mr. Rusch?

A. That was not very long—eighteeninches; something like that;

I think it was a tin pipe—if you mean the pipe that ran from the floor to the lower ice box.

214 Q. Why did you not run this tin pipe into the upper ice box as well as in the lower ice box?

A. Because I couldn't; I intended to do so, but I struck that heavy beam.

995 215 Q. What was the occasion of your running three beer pipes on the outside of the upper ice box instead of the inside of it in connection with the apparatus that you put in Mr. Rusch's saloon?

A. In the first place, I couldn't connect the large galvanized-iron pipe or tin pipe with the upper ice box on account of that heavy beam, and, second, the man wanted it made cheap, so I didn't feel like being troubled very much with it.

216 Q. In "Schaub's sketch" you show the pipe "E" running into the upper ice box. About what distance does it run into the upper ice box?

(Objected to on the ground that it is not proper redirect examination, and that the question has been answered.)

A. About from three to four inches—as it shows on the cut.

217 Q. And what distance does it run below the saloon floor?

A. To the ice box in the cellar.

218 Q. Does your sketch show the wooden casing or pipe that you placed outside the galvanized-iron pipe?

A. Yes, sir; it does show it up to the ceiling from the cellar floor.

219 Q. How far did the galvanized-iron pipe run into the wooden pipe?

A. About eighteen inches.

220 Q. How was the coal dust with which you say you filled the space between the wooden pipe and the galvanized-iron pipe kept there?

A. I shoved some rags in from the bottom part between the galvanized pipe and wooden one and filled the charcoal dust in from the top, between *the* both of them, and pounded it down so that it had to be perfectly water and air tight.

996 221 Q. Did this galvanized-iron pipe have an elbow to it, as appears on this sketch; and, if so, what was the length of this elbow?

A. It did; it was eighteen inches long.

Recross-examination resumed:

222 X Q. When was it you changed this apparatus of Mr. Bauerschmidt's from one saloon to another?

A. I think it will be three years this spring.

223 X Q. Did Bauerschmidt have in any of his saloons a lower ice box?

A. No, sir; I stated that before, and she has not got one yet.

224 X Q. What became of the upper ice box in this old apparatus which you took out of Mr. Boehm's saloon?

A. Maybe they started a fire with it in their furnace; I left it there.

225 X Q. How about the wooden pipe that you say you ran down to the lower ice box?

A. They got that down there yet; the man showed that to *to* me a couple of days ago.

226 X Q. How about the galvanized-iron pipe out of that old apparatus?

A. Maybe he got that down there, too, or else he threw it away; I don't know, because he never authorized me to take care of it. I should think Mr. Boehm could make that statement better than I; it was his property, not mine.

227 X Q. What become of the wooden faucets out of that old apparatus?

A. I got them down there in the store to-day yet.

228 X Q. Did you carry away any of the metal work of this old apparatus when you took it out?

997 A. No, sir; I did not carry it away. We put it on the wagon and I took it down in the shop; what Mr. Boehm, I suppose can state.

229 X Q. Did you carry away those copper coolers which you used in the upper ice box?

A. Those were put on the same wagon in the same *land*.

230 X Q. Did the sheet metal go on the same load?

A. I don't remember that no more, because I never deal in old stuff.

231 X Q. You have been down to Boehm's saloon lately and have talked the matter over with Boehm and Kleinhanz?

A. I have.

232 X Q. You told him what you had testified to about this old apparatus?

A. Yes, sir; and he told me that he had seen that man that worked for me; his name is Martin Selbig; that he could prove the apparatus he (Boehm) had just so well as I, because he soldered the pipes and he often done repairs on the apparatus afterwards. This is what Boehm said to me.

233 X Q. Where does Martin Selbig live?

A. He keeps a stove store and tin shop near the Eleventh Ward house, in this city. He worked for me about five or six years.

E. J. SCHAUB.

STATE OF NEW YORK, } ss:
County of Monroe, }

On this the 15th day of May, A. D. 1883, before me personally appeared the above-named Ernest J. Schaub and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

998 Adjourned to Tuesday, February 13th, 1883, 7 p. m.
Adjourned to Thursday, April 5th, 1883, 3 p. m.

Parties appeared as before.

ANTHONY KLEINHANZ, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by his counsel, JOSIAH SULLIVAN, Esq., as follows, to wit:

1 Q. What is your name, age, residence, and occupation?

A. My name is Anthony Kleinhanz; age is thirty years; residence is No. 226 North Clinton street, Rochester, N. Y. My regular business is carpenter. I am now a bartender.

2 Q. How long have you lived in Rochester?

A. Pretty near fourteen years. It will be fourteen years the first of July next.

3 Q. Are you acquainted with John Boehm, who keeps a saloon on corner North St. Paul street and Franklin street, in this city?

A. Yes, sir; he is an uncle of mine.

4 Q. Did you at any time work for him; and, if so, when and where?

A. I worked for him from right after New Year's, 1876, to March, 1879, at the same place where he keeps now, at the corner Franklin and St. Paul street-, tending bar.

5 Q. What were you engaged in doing for him?

A. Tending bar and do other kind of work what is in the carpenter line sometimes—when I had time.

6 Q. Are you at present working for him?

A. Yes, sir.

7 Q. While you were working for John Boehm, between the year 1876 and 1879, as you have stated, did he use a beer-cooling apparatus in his saloon?

A. Yes, sir.

999 8 Q. Who put in that apparatus and about when was it put in?

A. Mr. Schaub put it in—Ernest Schaub, I guess. He put the tinwork and the plumbing. It was put in in the year 1877.

9 Q. Did any other person except Mr. Schaub work on this apparatus in putting it in. And, if so, you may state who.

A. Mr. Schaub put in the plumbing work and I put in the wooden box.

10 Q. You may go on and describe this apparatus fully.

A. We had a small ice box upstairs. Four pipes had been running through from these to the lower ice box. Them four pipes had been running through a galvanized-iron pipe from between four and one-half to five feet long, and from there we had a small box in which the galvanized-iron pipe run in about between eight and twelve inches. This box was from eighteen inches to two feet long. From there the box was made a half mitre and from the mitre to the end of the box was long about four feet. This whole box was air-tight from the top to the bottom, and right in the box the pipes ran and the waste water. The ice water what ran through this wooden box ran right over the kegs. This is the way we had it.

11 Q. What were the pipes fastened to in the lower ice box?

A. They were fastened to the kegs which were tapped.

12 Q. What was in the kegs?
A. Beer and ale.
13 Q. What was the size of this ice box upstairs in the saloon?
A. The box was about two feet by two feet and pretty near eighteen inches deep.
14 Q. Whereabouts in the saloon was this ice box put up?
1000 A. On the west side.
15 Q. I mean with reference to the bar.
A. This ice box was right close to the bar—on the outside end—on the west end; it was inside the bar.
16 Q. How large was the ice box in the cellar?
A. That I don't know for certain; between six to eight feet long and between four and five feet broad, and I think seven and a half feet high.
17 Q. What was it made of?
A. Two-inch matched stuff.
18 Q. You go on and state whether it was lined.
A. The lower box was not lined, but the upper box was.
19 Q. What was the upper box lined with?
A. Galvanized iron.
20 Q. Of what other material was the upper box made of beside this lining?
A. The outside, ash and black walnut; the inside, pine.
21 Q. Was this galvanized-iron pipe you speak of fastened to the upper ice box; and, if so, how?
A. It was soldered on it.
22 Q. Whereabouts was it soldered to the upper ice box?
A. To the lining.
23 Q. Is that to the lining in the upper ice box?
A. Yes, sir; to the galvanized-iron lining.
24 Q. What was the size of this galvanized-iron pipe?
A. Between three and three and one-half inches around.
25 Q. You mean the width of it across?
A. Yes, sir.

(Objected to as leading.)

26 Q. What do you mean when you say "between three and three and one-half inches around?" Do you mean the diameter or circumference?

1001 (Question objected to as leading.)

A. I mean crossways (pointing to a glass bottle on the desk before him and drawing his finger across the middle of it).
27 Q. What was the size of this pipe across the middle?
A. Between three and three and one-half inches.
28 Q. What was the shape of this pipe?
A. The pipe was made round, and after that we had to make it a little oval.
29 Q. How was this wooden box fastened to this iron pipe?
A. The wooden box was fastened on the floor—on the joists; the

tinsmith fastened that; I don't know how; he put some tin around it.

30 Q. What was the size of those pipes through which the beer was drawn?

A. I don't know for certain; I believe about three-fourths of an inch.

31 Q. And what was the length of them?

A. Between ten and eleven feet.

32 Q. Where did they run from, and to where did they run?

A. They run from the faucet of the upper ice box to the lower ice box—right to kegs; were fastened—the kegs that were tapped.

33 Q. Were those pipes fastened to the kegs in the lower ice box; and, if so, how?

A. To the faucet; the pipes were screwed on the faucet with a coupling.

34 Q. Through what did those beer pipes run?

A. Through a wooden box and galvanized pipe.

35 Q. Is that the wooden box and the galvanized-iron pipe which you have already described?

A. Yes, sir.

1002 36 Q. What was the size of this wooden box which you say was fastened to this galvanized-iron pipe?

A. Six by six on the outside.

37 Q. How was it made?

A. Well, it was made four-cornered and tight.

38 Q. How were the joints as to tightness?

A. Well, square joints. That makes a tight box.

39 Q. And what was the length of this pipe which you call a wooden box?

A. About five feet six inches. That includes the whole wooden box.

40 Q. What was the length from the upper end of this galvanized-iron pipe to the lower end of this wooden pipe, which you call box?

A. About eight and one-half feet. I can't tell exactly. It was running slanting.

41 Q. Did that pipe make a tight cold-air passage between the two ice boxes?

Objected to as leading.

A. Yes, sir; that was the intention. It was put up to save the ice down the cellar.

42 Q. What, if anything, besides those pipes were there in the upper ice box?

A. Nothing but ice. It was the only thing we had there.

43 Q. When the ice in the upper ice box melted what became of the water?

A. The water run through this galvanized-iron pipe and the box and over the beer kegs.

44 Q. How was the beer forced from the kegs in the cellar to the bar upstairs?

A. With an air pump.

45 Q. Through what was the beer forced?

A. Through the pipe. On each keg is one pipe and the beer is forced through that pipe.

1003 46 Q. How many pipes run through this large pipe which you have described, from the beer kegs in the cellar to the faucets in the upper ice box?

A. Four pipes.

47 Q. How long did Mr. Boehm continue using this apparatus which you have just described?

A. I used it as long as I worked there—two years. Then he had it yet until last summer; I believe it was until last summer. I worked there three years. I worked a year there before he got it.

48 Q. How long was it from the time he put it in until he took it out?

A. I am certain he put it in in 1877, but I couldn't say for certain that he took it out last year, but I know he had it until last year. I don't know what time last year he took it out.

49 Q. While you worked at Mr. Boehm's did you explain the working of this apparatus to anybody?

A. Yes, sir.

50 Q. What did you say about it?

A. Well, I told them how it worked. It keeps the beer nice and cold. I told the saloon-keepers. A fellow that went out West by the name of Deutsch—he had a saloon here. He put one of them uprights up or had one put up. He came to me and I showed it to him and told him he should put up his and he would save on ice and would always have nice beer, and he told me he would do so.

(Objected to as hearsay.)

51 Q. While Mr. Boehm used this apparatus was he pleased with the working of it?

(Counsel for Magin objects to this on the ground that it calls for hearsay evidence.)

(Question waived.)

52 Q. Did this apparatus work well and keep the beer nice and cool?

1004 (Objected to as leading.)

The latter part of the question waived.

A. Yes, sir.

53 Q. How did it keep the beer?

A. It kept it good.

54 Q. Question repeated.

A. It kept the beer nice and cool.

Adjourned to Friday, April 6th, 1883, 2 p. m.

Parties appeared as before.

55 Q. Please look at Gordon model now before you and say whether or not it is like the apparatus that was used by Mr. Boehm in his saloon, or if it differs from the apparatus used in Mr. Boehm's saloon, state in what particular.

(Witness examined the model.)

A. It is the same model, but that galvanized pipe (pointing to the galvanized-iron pipe on the model) run in Mr. Boehm's apparatus about three inches up from the bottom of the upper ice box; inside of the upper ice box we had four coolers, one on each faucet; the coolers were about one foot long and the thickness about two inches, but we did not have that apparatus the same as it is here; we did not have it in the middle of the counter; we had it on the west end of the counter. In other respects it is the same as the model here. Instead of the galvanized-iron pipe running in the lower ice box the wooden box in Boehm's apparatus had an elbow, as I stated yesterday, bent about half mitre. The other fixtures just the same as we had it in Boehm's apparatus.

56 Q. How much beer would those coolers in the upper ice box contain?

A. Well, that's more than I can tell. I never measured them; about a pint, I guess. I wouldn't say for certain.

1005 57 Q. What was the object of having those coolers in the upper ice box?

A. Well, for the first thing, we couldn't use the pipes for if the ice lay on them it would spoil them, for they are too soft, so we put them coolers in. They were made out of copper; they were stronger; they would stand the pressure of the ice.

58 Q. Then were those beer pipes which ran into the cellar fastened to one end of the coolers and the pipes which were connected with the faucets in the bar-room attached to the other end of those coolers?

(Objected to as leading.)

A. Yes, sir.

59 Q. And did the pipes so constructed make a continuous pipe from the beer kegs in the cellar to the faucets in the bar-room?

A. Yes, sir.

And in answer to cross-interrogatories proposed to him by GEORGE B. SELDEN, Esq., counsel for MAGIN, he saith:

60 X Q. You say you commenced to work for Mr. Boehm shortly after the first of January, 1876?

A. Yes, sir.

61 X Q. Was this the first time you were to work for Mr. Boehm?

A. Well, I worked for him when I came to this country, about fourteen years ago, but I only worked a short time for him at that time. I was not hired; he is an uncle of mine and I worked for him. I worked for him from 1876 to 1879, in March. After I had been with him the first time I went away and learned my trade.

62 X Q. Whom did you work for while learning your trade?

1006 A. A fellow by the name of Schiftbanker. I worked for him pretty near nine months. I worked for him at Bartholomay's brewery, putting up an ice-house. I don't know where — is now—he is paralyzed.

63 X Q. Where did you work next?

A. I worked for a carpenter boss by the name of Kraft—between two and three years—I don't know for certain. From there I went and worked for Boyd, the carpenter, only for a short time. After that I have been peddling beer for Reisky & Spies. From there I went to work for Mr. Boehm.

64 X Q. What made you quit carpenter-work and go to peddling beer?

A. Mr. Boyd did not have any more work and I had to lay off for a couple of weeks, and Mr. Spies heard that I didn't work and came and told me that he had been short on help and I should help him out, so I went there; of course, I wouldn't lay idle.

65 X Q. What part of the old country did you come from?

A. I came from near the Rhine—place called Mainz.

66 X Q. How old were you when you came over here?

A. A little over sixteen years.

67 X Q. Have you any relatives in this country besides Mr. Boehm?

A. I have five brothers and one sister in this city. The oldest died two years ago, the eighth of April, 1883. I have some more relations over this country, but I don't know where they are.

68 X Q. What is the relationship between yourself and Mr. Boehm?

A. He is my mother's brother.

69 X Q. You say you left Mr. Boehm in March, 1879. What work did you go at next after you had left him?

A. Carpenter trade.

1007 70 X Q. Whom did you work for?

A. I worked for John Luther & Co., of this city. Immediately after I left Mr. Boehm I was sick; sick from March to June; laid up with rheumatism; the doctor told — it would be healthier for me to work outside.

71 X Q. How long did you work for Luther?

A. I worked for him from June to the last of September.

72 X Q. What did you do next?

A. From there I went to Mr. Boehm and have been working for him since—from last September until now.

73 —. Did Mr. Boehm have any other barkeeper beside yourself since last September?

A. No, sir.

74 X Q. Mr. Boehm lives in the same house with his saloon, does he?

A. Yes, sir.

75 X Q. What kind of an apparatus is Mr. Boehm now using for drawing his beer?

A. He draws it out of the faucet, right from the keg.

76 X Q. Has he got an ice box of any kind?

A. Yes, sir.

77 X Q. Please describe it.

A. Well, it is a small ice box, large enough for one keg.

78 X Q. How long has Mr. Boehm been using this small ice box?

A. Since he took this apparatus out.

79 X Q. Was he using the small ice box when you went there last September?

A. Yes, sir.

80 X Q. Do you know when he took out this old apparatus which you have testified about?

A. Well, I stated yesterday I ain't certain if he took it out last year or before. I know that he ain't got it out very long.

1008 81 X Q. Do you know why he took it out?

A. I don't know.

82 X Q. Who made this new ice box he is using now?

A. A fellow by the name of Muro, he fixed it over.

83 X Q. What do you mean by fixing it over?

A. He had to put a door on it to get a keg of beer in it.

84 X Q. Boehm had used this ice box, then, before Muro fixed over; and, if so, what for?

A. He used it for this upright beer apparatus.

85 X Q. This was the upper ice box in the old apparatus?

A. Yes; some of it was used before. Muro made it higher—it was not high enough to put a keg in.

86 X Q. Describe the arrangement of the bar and this new ice box in Boehm's saloon.

A. We got the bar and the ice box on the west end—the way I stated yesterday—the bar runs from south to north, and on the north end the bar runs in a circle to the west, and on the end of the counter—between the wall and the counter—we got the ice box.

87 X Q. Did the ice box in the old apparatus, which Boehm took out, stand in the same place this new ice box does?

A. Yes, sir; the ice box is not new—it is fixed over.

88 X Q. Does the new ice box reach clear down to the floor?

A. Yes, sir.

89 X Q. Did the ice box in the old apparatus reach clear down to the floor?

A. Yes, sir.

90 X Q. What has become of the lower ice box, the one in the cellar?

A. They tore it out.

91 X Q. What do you mean by they?

1009 A. I don't know who tore it out; Mr. Boehm had it taken out; I don't know whether they had a carpenter or a laborer; I didn't work there at that time.

92 X Q. You said these coolers in the upper ice box were twelve inches long and two inches in diameter; did the beer pipes run into the top of these coolers?

A. Yes, sir; I said they were about twelve inches long and two inches in diameter.

93 X Q. Now, how far was it from these beer pipes to the end of the coolers?

(Objected to as indefinite).

A. Now, what do you mean, from where these beer pipes were fastened into the cooler?

94 X Q. Yes; that is just what I mean.

A. Close to the end.

95 X Q. How long was the beer pipe from the cooler up to the faucet?

A. I don't know for certain; between four and six inches.

96 X Q. These pipes were close to the front of the box?

A. The faucets which ran through the box and this pipe was fastened inside of the box to the faucets.

97 X Q. These coolers lay on the bottom of the ice box?

A. Yes, sir.

98 X Q. The beer pipe at the end opposite the faucets ran up from the cooler and bent over and ran down this galvanized-iron pipe?

(Objected to as indefinite, and the counsel is assuming that the pipe next to the faucets run into the galvanized-iron pipe, while the witness testified that it was the pipes at the other end of the cooler that ran into the galvanized-iron pipe).

1010 A. It ran up about an inch and then bent over into the galvanized-iron pipe. The galvanized-iron pipe run up about an inch higher than the cooler.

99 X Q. Did Mr. Boehm use these coolers all the time that you were there?

A. Yes, sir.

100 X Q. Did you have any occasion to clean these coolers out?

A. Yes, sir.

101 X Q. How did you do it?

A. Well, I cleaned them. I don't know as it is necessary to tell how I done it. I used something of my own to clean them with.

102 X Q. Does Mr. Boehm know how you cleaned them?

A. Well, he never asked me, as far as I know.

103 X Q. How often did you use to clean them?

A. I always cleaned them when I thought it was necessary; I did not set any time.

104 X Q. State as near as you can how often you cleaned them.

A. Well, I can't say that.

105 X Q. You mean you don't want to or you don't recollect?

A. I don't recollect. I wouldn't swear that I cleaned them every week, every two weeks, or every day. I wouldn't swear to it because I don't recollect.

106 X Q. Who taught you how to clean these things out?

A. Nobody.

107 X Q. Did you read it in a book?

A. No, sir.

108 X Q. Who was barkeeper for Boehm after you left there in 1879?

A. A fellow by the name of Joe Rosch.

1011 109 X Q. How long did he work there?

A. That I don't know. He worked twice there that I know. He worked there awhile right after I went away, and then Boehm had another bartender; his given name is Leo; I don't know his other name; and after Leo went away Joe Rosch worked for him again.

110 X Q. Did Boehm have any other bartender during this time?

A. No, sir; not as far as I know. After Rosch went away I came back.

111 X Q. What was the width of this upper ice box of the old apparatus from front to back—the inside measurement?

A. About two feet, I guess.

112 X Q. Then, when this box was made over it had to be widened or lengthened?

A. Yes, sir.

113 X Q. You had never tended bar before you went to Boehm's?

A. This reminds me of something which I forgot to state when you asked me the first question, and it is that I worked for a fellow by the name of Kaul; I tended bar for him a couple of weeks.

Adjourned to Wednesday, April 11th, 1883, 2 p. m.

Parties appeared as before.

114 X Q. How far apart were these coolers in this ice box?

A. That I don't know; I never measured.

115 X Q. State as near as you can.

A. Well, I don't know; I don't know if they were close together or a little apart.

1012 116 X Q. You said the short diameter of this galvanized-iron pipe was about three to three and one-half inches. What was the long diameter of this galvanized-iron pipe?

A. Between four and four and one-half feet; you mean the length of it?

(Counsel for defendants requests counsel for plaintiff to inform witness what he means by long and short diameter, so that the witness can understand the question.)

117 X Q. You said this pipe was oval and it was three to three — one-half inches across one way; now, what was its size the other way?

A. I tell you this pipe was only oval on the floor where we had to put this pipe through the floor because we couldn't get near the hole on account of a header, but opposite the floor the pipe was round from the floor up to the upper ice box.

118 X Q. What do you mean by a header?

A. A header is on a chimney; they can't run the joist in the chimney and they put a short piece of joist across from one joist to

another, and in this small piece they fasten the joist instead of in the chimney.

119 X Q. Now, how was this oval galvanized-iron pipe connected with the square wooden pipe below the floor?

A. I only said in the other question that this pipe was oval only at the floor where we put this pipe in. The other part of this galvanized-iron pipe below the floor was round, just the same as above the floor.

120 X Q. How was the round galvanized-iron pipe connected with the square wooden pipe?

A. This wooden pipe was run over the galvanized-iron pipe and the tinsmith had that fastened; he had some tin around this wooden pipe and fastened to this galvanized-iron pipe.

121 X Q. How deep was this header; the same as the joist?

A. Yes, sir.

1013 122 X Q. How far was it to the wall?

A. Close to the wall.

123 X Q. What was the size of this oval pipe that went through the floor?

A. This pipe is the same as the round pipe—measured the same as the other—in diameter.

124 X Q. How could the diameter measure the same if one was round and the other oval?

(Counsel for defendants objects on the ground that the witness did not state that one pipe was round and the other oval, but he stated that the pipe was round and was oval at the spot where it went through the floor.)

(Counsel for plaintiff objects to this objection on the ground that it instructs the witness.)

A. Well, it is only one pipe and this pipe is only oval on the floor where it went through the floor—right there.

125 X Q. You have never told anybody how you cleaned these coolers?

A. I stated that the last time I was here that's something of my own; I wouldn't tell how to clean them.

126 X Q. Have you talked with Tinsmith Schaub about this matter lately?

A. Yes, sir.

127 X Q. When was the last time you talked to him about it?

A. Yesterday—it was day before yesterday.

128 — Q. That was since your last examination?

A. Yes, sir.

129 X Q. Schaub has been down to your saloon frequently since this matter came up?

A. I didn't see Schaub in our place for the last two or three weeks.

130 X Q. Where was it you saw him day before yesterday, then?

1014 A. In his store.

131 X Q. Did you go up there to see him?

A. I passed by there—I dropped in his store.

132 X Q. Where were you going when you passed by there?

A. I had been over here on Exchange street, at Sherlock & Sloan's; had to get something fixed for the water works. They told me it would take about half an hour to get it fixed, so I took a walk; walked around; passed Schaub's store. I went in to see him.

133 X Q. Was this a job of plumbing you went to Sherlock & Sloan's about?

A. Yes, sir.

134 X Q. Why didn't you take it to Schaub in the first place?

A. Sherlock & Sloan did the plumbing at the time when Mr. Boehm built his place. Mr. Boehm said I should take it there, because they put it in new and they knew how it worked.

135 X Q. Did you tell Schaub that you had been examined about this old apparatus that Mr. Boehm threw out?

A. Yes, sir.

136 X Q. Did you tell him how you had described the old apparatus?

A. Yes, sir; I only told him that I had been examined how our old apparatus was.

137 X Q. What else did you say to him?

A. I only told him that I had to go up to-day.

138 X Q. Did you have any talk with Schaub before he was examined?

A. I don't remember exactly if I ever did before.

139 X Q. Wasn't he down to your saloon about that time?

1015 A. It seems to me a kind of funny that I should remember everybody that comes to our saloon. I ain't got no list to put everybody's name down.

140 X Q. I am not asking you about everybody. I am only asking you about Mr. Schaub.

A. Well, that's just as good.

141 X Q. Had you not talked with Mr. Schaub before you were first examined?

A. Yes, sir.

142 X Q. Where was it that you talked with him; down to your saloon?

A. Yes, sir.

143 X Q. Did you talk to him more than once about it before you were first examined?

A. Yes, sir.

144 X Q. How many times?

A. That's what I can't say.

145 X Q. More than twice?

A. That's what I said. I don't know how many times.

146 X Q. Didn't he tell you what he had sworn to about it?

A. He only said that he had been examined from a child to the time that he had been here to be examined.

147 X Q. Where was this galvanized-iron pipe located in the upper ice box—near the middle of it or nearer one end than the middle?

A. Nearer to the northwest corner of the ice box.

148 X Q. The faucets were on the south side of the ice box, as I understand it?

A. Yes, sir.

149 X Q. Who put in the pump that you used in connection with this old apparatus?

A. The first pump Mr. Boehm bought of Mr. Neuhard and Mr. Schaub set it in.

1016 150 X Q. How long was this pump used that Boehm got of Neuhard?

A. That I don't know; he had it after I went away from him.

151 X Q. That is, after you left him in March, 1879?

A. Yes, sir; he had the first pump yet when I went away; he had it until he put the upright in.

152 X Q. Who put in the upright?

A. Mr. Schaub.

153 X Q. Have you talked with Boehm about this old apparatus?

A. Yes, sir.

154 X Q. Good many times?

A. I don't get much time to talk about it.

155 X Q. Whom else have you talked with about it besides the counsel of the defendants?

A. I don't know that I ever did talk to any one besides Mr. Schaub and Mr. Boehm. I may, but I don't remember.

156 X Q. Have you talked to Mr. McKay about it?

A. I don't know if I know Mr. McKay. I might know him by sight, but not by name.

157 X Q. Do you know Eugene Welker?

A. No; I don't; I never heard that name before.

158 X Q. In this old apparatus that you say that Mr. Boehm used was there any jacket about this galvanized-iron pipe?

A. I don't know what that means—a jacket; I can't understand.

159 X Q. I mean an outer pipe or casing filled with sawdust or rosin or something to keep the heat out.

A. No; we didn't have anything around on the outside, only this pipe.

1017 160 X Q. Then in that respect the old apparatus that Mr. Boehm used, as you say, was unlike the model which you saw the other day?

A. Yes, sir.

161 X Q. Do you know whether Boehm's trade fell off any while he was using this old apparatus?

A. Not that I know. I can't tell that. I never asked him in that respect.

Redirect examination:

162 Q. You said in answer to a question of plaintiff's counsel that the upper ice box used in connection with the old apparatus and the upper ice box which Mr. Boehm now uses runs down to the floor. Now, is the bottom of the upper ice box resting on the floor; and, if not, how far above the floor is it?

(Objected to as indefinite.)

A. In the ice box we use now the upper floor is over two feet above the floor of the saloon, and in the old apparatus this was a good deal higher than it is now—than the way we got it now.

163 Q. What was the distance between the floor of the saloon and the bottom of the old ice box?

A. I guess about two feet and six and eight inches.

164 Q. What is the distance between the floor of the saloon and the bottom of the new ice box?

A. A little over two feet.

165 Q. What did you use the lower part of the upper ice box for?

A. We used it for storage—whatever we had—wine, ginger ale—whatever we wanted to put in.

167 Q. Do you make the same use of the lower part of the new upper ice box?

A. Yes, sir.

1018 167 Q. How far did this galvanized-iron pipe run into the upper ice box?

A. About three inches in the upper floor of the ice box.

168 Q. Do you mean three inches above the bottom of the ice box?

(Objected to as leading.)

(Question withdrawn.)

169 Q. Do you mean by the upper floor of the ice box the one that the ice and cooler rests on?

(Objected to as leading.)

A. Yes, sir.

170 Q. How large around was this galvanized-iron pipe?

A. I never measured. I only measured what we called diameter. I never measured anything around.

171 Q. About what size around?

(Objected to on the ground that it is calling for the result of a mathematical calculation which the witness is not shown to be able to perform.)

A. I tell you I never measured anything around. I always measured across; of course, that's our trade; we always measure across. I will tell you in a few minutes if you give me time.

172 Q. You will please take the time and tell us how much it *it* is.

(Witness retired to a private room to make the calculation by himself.)

A. A pipe about three and one-half inch- in diameter measures around between nine and three-quarter- and ten inches. A pipe of three inches in diameter measures around about nine and one-fourth inches.

173 Q. How much of this galvanized-iron pipe was oval?

1019 A. Only a little where it went through the floor.

174 Q. What was the reason for making this galvanized-iron pipe oval at that place?

A. On account of the header which I stated before.

175 Q. Have you made a drawing of this old apparatus for drawing and cooling beer which was used in Mr. Boehm's saloon?

A. Yes, sir.

Objected to as immaterial and improper redirect examination.

176 Q. Have you that drawing with you? And, if so, produce it.

A. Yes, sir; it is right here.

(Objected to as improper on the redirect examination.)

Witness produces sketch, which is here marked "defendants' Kleinhanz drawing."

(Defendants' solicitor calls the witness' attention to the omission of a line in the drawing, which the witness supplies.)

(The above statement by me, the commissioner, was made at *at* the request of plaintiff's counsel.)

(Defendants' counsel states for the information of the court that the line above referred to is the line drawn showing the end of the lower ice box.)

(The last statement of defendants' counsel objected to on the ground that he is not a witness in this case.)

(Defendants' counsel calls upon plaintiff's solicitor if the foregoing statement of the defendants' solicitor is incorrect to so state it.)

(Plaintiff's counsel states that he has not been allowed to see this drawing as yet; that he has no means of knowing what the

1020 truth of the matter is; that the proper mode of showing what the line which was put on the drawing at the suggestion of defendants' counsel represents would be by asking the witness about it, as defendants' counsel is not under examination.)

(Defendants' counsel states that the line was drawn by the witness in the presence of both counsel and commissioner, and that plaintiff's solicitor was standing within two or three feet of the witness at the time the line was drawn by the witness and in full view of the witness at the time the line was drawn, and defendants' counsel now hands with pleasure to plaintiff's solicitor the drawing and asks him to state if the line drawn by witness was not the line defendants' solicitor stated in the foregoing statement.)

(Before accepting the drawing the plaintiff's solicitor denies that he has as yet had such a view of it as to enable him to understand it. He denies that he saw the witness draw the particular line referred to close enough to understand its location on the drawing, and he is unable to state what the line referred to is.)

Adjourned to Thursday, April 12th, 1883, 2.30 p. m.

Parties appeared as before.

175 Q. You will please explain this drawing by letter, stating what each letter represents.

(Objected to as improper on redirect examination.)

A. "A" means the front of the ice box where the faucet is fastened; "B" means the back part of the ice box; "C" means the top of the ice box; "D" means where the pipes run through—this galvanized-iron pipe runs through to the cellar; these pipes from the coolers run through this galvanized-iron pipe down through the box to the kegs; "E" means the top of the ice box in the cellar;
1021 "F" means the end—the north end of the ice box; "G" means where the hose runs from the pump down to the keg for pressure; "H" means the front of the ice box; "K" means the kegs in the ice box in the cellar; "I" is the south end of the ice box; "L" means the coolers in the upper ice box; "M" are the faucets; "N" is the guage.

Recross-examination:

178 X Q. In the new ice box, the one Boehm is using now, what supports the keg of beer?

A. Well, the floor, and he got kind of upright which pulls out and he puts the keg on it.

179 X Q. The keg rests on this upright which rests on this floor?

A. On the upper floor of the ice box.

180 X Q. Have you got a drip pipe in this new ice box?

A. What do you mean by drip pipe—a waste pipe?

181 X Q. Yes, sir.

A. Yes, sir; we have.

182 X Q. Where does that pipe run to?

A. Runs in the cellar—in the sewer.

183 X Q. Which side of the building is the sewer?

A. The sewer is in the middle of the cellar, on the west end, close to the cistern wall.

184 X Q. You said you were not working at Boehm's when this old apparatus was torn out; is that so?

A. Yes, sir; that is so.

185 X Q. You didn't do any of the work, then, in tearing out the old apparatus?

A. I have been stating this question once before that I didn't.

186 X Q. When you went back to Boehm's again after this old apparatus had been taken out Boehm was using this new ice box and drawing his beer direct from the keg, was he not?

1022 A. Yes, sir.

187 X Q. When and where did you make this drawing—the "Defendants' Kleinhanz Drawing"?

A. I made it yesterday, about an hour before I came up here. I drawed it with lead pencil, and to-day had to draw it over with ink. I made it to home in Mr. Boehm's saloon, where I work, at the noon hour; that's the only time I could do it.

188 X Q. This drawing represents these coolers placed one above the other?

A. Well, I ain't no man to draw very well, and I drawed it so good as I could; but these coolers lay on the side of each other in the upper ice-box—on the upper floor.

189 X Q. How many coolers does this drawing show?

A. This drawing shows three coolers, but Mr. Boehm had four in his apparatus.

190 X Q. Does this drawing represent a wooden pipe as running into the lower ice box?

A. Yes, sir.

191 X Q. How far into it?

A. It runs in from eight inches to one foot; that's what it means to this half mitre.

192 X Q. The drawing shows the wooden pipe as running in the ice box on the south side, does it not?

A. Yes, sir; this wooden box from the half mitre in the lower ice box runs to the south side.

193 X Q. Which side of the box did you use to keep the beer kegs?

A. We used to keep the beer kegs where we tapped it—on the south end of the lower ice box.

194 X Q. Have you talked with anybody about this drawing since yesterday?

A. No, sir; I only showed it to Mr. Sullivan; that's all.

195 X Q. When did you show it to Mr. Sullivan?

1023 A. On the way coming over here.

196 X Q. Coming over here from his office?

A. Yes, sir.

197 X Q. You have blurred this drawing a good deal inking it in.

A. I don't understand this question.

(I, the examiner, inform the witness that "blurring" means rubbing the ink over the paper, and the witness then answers, "No, sir." (I make this statement at request of plaintiff's counsel.)

198 X Q. Is this the first drawing you ever made?

A. That's the first drawing I ever had to make over with ink, but otherwise have drawed with the lead pencil good deal, because that's in our trade; we have to do it sometimes.

199 X Q. What do you call this drawing you have made—a section, elevation, plan, or what?

A. We generally call it by our trade elevation.

200 X Q. It shows the lower ice box with the side next to the observer removed, showing the interior of the ice box and the door on the opposite side, doesn't it?

A. What does that "interior" mean?

201 X Q. It means the inside.

A. I won't answer this question because I don't understand it right.

202 X Q. You don't know much about drawing, then.

A. I have been stating before that I wasn't a great hand at drawing, and if anybody would tell me in German—my own language—then I would explain this question what has been asked me before.

203 X Q. Are the rules in drawing any different in German than in English?

(Counsel for the defendants objects on the ground that this manner of examining witness is absurd nonsense.)

1024 A. I had never drawed out in Germany. I came over here when I was a boy.

(Plaintiff's solicitor states in answer to the objection of the defendants' counsel to the last question that the witness under examination having produced a drawing which purports to represent the old apparatus used in Boehm's saloon, that he is certainly entitled to find out by cross-examination whether or not the witness is competent to make a drawing.)

204 X Q. Now, I suppose the most of the drawing you have done has been in your business as carpenter—marking on a board with a scratch ?

A. I like to answer your question that the carpenters don't use any scratch—but we use a scratch awl.

205 X Q. Question repeated.

A. Well, we haven't got no paper along when we are on a job, so we take a board or a piece of joist or whatever we get handy and draw on it, and if not we take the floor—that's big enough.

206 X Q. Mark on it with a piece of chalk, I suppose?

A. Well, if we aint got no scratch awl or no pencil then we take the chalk—and the carpenters are generally poor to buy lead pencils.

207 X Q. As you admit that you are not familiar with the rules of drawing, I suppose you don't really know whether this drawing that you have made would correctly represent the construction of that old apparatus to a person who did understand how to make drawings?

(Objected to on the ground that it's incompetent, and on the further ground that the witness did not state what the counsel assumes.)

A. What do you mean by "as you admit?"

1025 208 X Q. You don't know what the English word "admit" means?

A. Well, there are some words that I can't understand ; of course, I can't talk very plain English. I don't know what some of them words means.

209 X Q. You don't know whether a party who did know how to make drawings would understand that old apparatus from your drawing, then ?

A. I know good many carpenters that can draw, and if I get a drawing of an elevation they must have a specification to it, and the specification shows every thing in it; that's the way we generally work in our trade.

210 X Q. You don't know, then, whether this drawing represents this apparatus or not so that a competent party could understand it?

A. Yes, sir ; it does.

211 X Q. What do you mean by the word "elevation"?

A. We mean by it if a drawing of a house or of an ice box or whatever it is—that's what we call "elevation."

212 X Q. This drawing of yours is an elevation of an ice box?

A. It is an elevation of the old upright Mr. Boehm had.

213 X Q. Who told you to make this drawing?

A. Mr. Sullivan; he asked me if I could draw it—this old apparatus Mr. Boehm had—and I said, Yes, sir. He said that I had to draw one up here, but I thought myself that I would draw this to home when I had time, so it wouldn't take long when I came up here; I thought it was just as good.

214 X Q. Did you talk to Mr. Boehm about it?

A. About what?

215 X Q. About the drawing?

1026 A. No, sir.

216 X Q. Did you talk to anybody about it beside Mr. Sullivan?

A. No, sir; not that I know.

217 X Q. Were you subpœnaed to testify in this case?

A. "Subpœnaed," that means from the court?

218 X Q. Yes, sir.

A. No, sir.

219 X Q. Who told you to come up here; Mr. Boehm?

A. No, sir.

220 X Q. Boehm knew where you were coming, did he?

A. Yes, sir.

221 X Q. You know Joe Wolf?

A. Yes, sir.

222 X Q. Was he in the habit of coming to your saloon when you were first there before March, '79?

A. What do you mean by this "in the habit of coming"?

223 X Q. Didn't he occasionally come to your saloon before you left Boehm's the first time?

A. Yes; he used to come there once in awhile.

224 X Q. You say you haven't explained this old apparatus to anybody except the parties mentioned in your previous examination?

A. Well, since what time?

225 X Q. At any time since these suits were commenced?

A. Yes, sir.

226 X Q. Whom have you explained it to?

A. To different parties.

227 X Q. Give their names.

A. I explained it to Mr. Sullivan.

228 X Q. Whom else?

1027 A. I can't remember the names of any one else; of course, I know so many by sight and not by name.

Redirect examination:

229 *X* Q. You said in answer to a question of plaintiff's counsel that you use a waste pipe in connection with the ice box now used

by Mr. Boehm. Did you use a waste pipe with the old apparatus used by him?

A. No, sir.

230 Q. How was the ice water carried away from the upper ice box in the old apparatus, and where was it carried to?

A. It went through the galvanized-iron pipe where the beer pipes had been running down into the lower ice box.

231 Q. Are you a German by birth and not very familiar with the English language, and are you also a little hard of hearing?

(Objected to on the ground that the defendants cannot discredit their own witness.

A. Yes, sir.

232 Q. Were you not subpœnaed by me to attend this examination the first day you came here?

A. Yes, sir.

233 Q. Did Mr. Boehm like your leaving the saloon and attending here as a witness?

A. No, sir; because he has been sickly; otherwise he wouldn't care; that's what he said.

ANTHONY KLEINHANZ.

STATE OF NEW YORK, } ss:
County of Monroe, }

On this the 13th day of April, A. D. 1883, before me personally appeared the above-named Anthony Kleinhanz and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

1028 Adjourned to Monday, April 16th, 1883, 2.30 p. m.
Adjourned to Friday, April 20th, 1883, 10 a. m.
Adjourned to Monday, April 23d, 1883, 2 p. m.
Adjourned to Wednesday, April 25th, 1883, 2 p. m.

Parties appeared as before.

JOSEPH ROSCH, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by his counsel, JOSIAH SULLIVAN, Esq., as follows, to wit:

1 Q. What is your name, age, residence, and occupation?

A. My name is Joseph Rosch; age is thirty-five years; residence is 69 Joiner street, Rochester, N. Y.; occupation is bartender.

2 Q. How long have you resided in Rochester?

A. I came here in 1867; then I went away again about a year and a half; I am here since.

3 Q. Do you know John Boehm, who keeps a saloon on the corner of Franklin and St. Paul street-, in Rochester?

A. Yes, sir.

4 Q. Did you at any time, and, if so, state when you worked for him in that saloon and in what capacity?

A. I did work for him as bartender.

5 Q. When did you commence working for John Boehm in his saloon on the corner of Franklin and North St. Paul streets?

A. I guess it was 1872; that was when I worked for him the first time. I also worked for him in 1877 and 1878.

6 Q. Was Mr. Boehm at that time—that is, 1877 and 1878—carrying on a saloon on the corner of Franklin and North St. Paul streets, where he does now, and did you work for him as a bartender?

1029 A. Yes, sir.

7 Q. At this time did Mr. Boehm use in his saloon an apparatus for drawing and cooling beer?

A. Yes, sir.

8 Q. How long did he use that apparatus?

A. He used it during the time I was there.

9 Q. How long was that?

A. About a year and a half or over; I can't say exactly.

10 Q. When did you quit working for Mr. Boehm?

A. I guess the fall of 1878—no; 1879.

11 Q. Have you worked for Mr. Boehm more than once?

A. I worked for him three different times.

12 Q. Between what years did you work for Mr. Boehm—that is, when did you commence to work for him and quit the last time?

A. I commenced in 1876 and I quit eight months ago—quit last September.

13 Q. Would you please describe this apparatus for drawing and cooling beer that was used by Mr. Boehm?

A. Yes, sir.

14 Q. Go on and describe it, giving size of boxes as near as you can and everything pertaining to it.

A. We drawed the beer from the cellar—we had a big ice box in the cellar and pipes running up to the store, with four faucets; then we had a box upstairs filled with ice for the ice water to run through to cool the pipes; the box on top was about two feet square; that in the cellar was about four feet wide and about six feet long; that's all I know about it.

15 Q. Was there anything that connected the upper ice box with lower ice box? And, if so, you may state what it was.

(The first part of the question objected to as leading.)

1030 (Question waived for the present.)

16 Q. Was there anything between the upper and lower ice box attached to this apparatus? And, if so, state what it was.

(Same objection as before.)

A. There was a galvanized-iron pipe from the ice box down through the floor—from where the ice laid in the box—to the box

in the cellar, and in the cellar it was a wooden box where the pipes lay.

17 Q. What was the length of this galvanized-iron pipe?

A. About five — six feet.

18 Q. What was its diameter?

A. The iron pipe, I guess, was straight down.

19 Q. How large was this iron pipe in diameter or across?

A. What do you mean? Do you mean how wide it was, or what? It was about two inches—two and a half.

20 Q. How long was this wooden pipe?

A. That was about six feet—six or seven feet.

21 Q. Did the beer pipes which ran from the kegs in the cellar to the bar upstairs run through anything; and, if so, how and what?

(Objected to as leading.)

A. They run through the box and through the pipe.

22 Q. Was this galvanized-iron pipe fastened to the upper ice box? And, if so, you may state how.

(Same objection.)

A. They run through the whole box upstairs and run through the floor.

23 Q. Was it fastened to the upper ice box?

(Same objection.)

A. Well, that's what I said before; of course if it was not fastened it would not stay.

1031 24 Q. How far did this galvanized-iron pipe run into the bottom of the upper ice box—that is, the ice box in the saloon?

(Same objection.)

A. It run right up into the ice. It was attached to the bottom of that box.

25 Q. How was the ice water in the upper ice box carried away, and where to?

A. It run through that pipe down to the other box.

26 Q. Which pipe do you mean?

A. This wooden box and this iron pipe.

27 Q. What was the length of these beer pipes which ran from the beer kegs in the cellar to the bar?

A. It must have been about fifteen or sixteen feet.

28 Q. Were those the pipes through which you drew the beer for customers?

A. Yes, sir.

29 Q. How was the beer forced through those pipes?

A By water power—air pump.

30 Q. Did you use this air pump or water power in connection with the apparatus?

A. Yes, sir.

31 Q. Did this wooden and galvanized-iron pipe make a tight cold-air passage between the upper and lower ice boxes?

(Objected to as grossly leading.)

A. Yes, sir.

32 Q. Did this apparatus work satisfactorily?

(Objected to as leading.)

A. Yes, sir.

33 Q. How long did Mr. Boehm use this apparatus altogether?

1032 A. I can't say that exactly. He must have used it about four years.

34 Q. Did he continue using it from the time he put it in until he took it out.

A. Yes, sir.

35 Q. What year was it he put it in?

A. I wasn't there then. He put it in, I guess, right after he builded the block.

36 Q. What year was that?

A. I can't say that exactly; I guess 1872.

37 Q. Where did Mr. Boehm keep saloon before he commenced doing business where he is now located?

(Objected to as immaterial.)

A. Opposite the court-house, on Main street.

38 Q. Did you work for him at that time?

A. Yes, sir.

39 Q. What year was it that he went from Main street to where he is now?

A. I guess 1875.

40 Q. Now, think a moment and see if you are mistaken in the year.

(Objected to as leading.)

A. I think myself I am. I don't pay much attention to keep dates.

41 Q. What year was it that Mr. Boehm took out his apparatus?

A. About a year and a half ago.

42 Q. Were you working for him at the time?

A. Yes, sir.

43 Q. Now, can you state what year it was that he put this apparatus in?

A. It was in 1876 or 1877.

44 —. Were you working for him at the time he put it in?

A. No; he had it put in before I came there.

1033 45 —. How long before you came there?

A. I couldn't say that.

46 Q. Well, about how along?

A. I can't tell; I used to go there and they showed it to me before I worked there; I don't know how long it is.

47 Q. Did they show it to you while they were putting it in?
A. No; after.
48 Q. How long after?
A. That I can't say, either.
49 Q. Who put in this apparatus for Mr. Boehm?
A. His name is Schaub.
50 Q. If you know his first name and place of business, you may state it.
A. I don't know his first name; his business is on West Main street.
51 Q. Where are you working at present?
A. At 30 East Main street, for Frank Kehrig.
52 Q. What is his business and what are you doing for him?
A. He keeps a restaurant and I tend bar.
53 Q. Has he an apparatus for drawing and cooling beer put in by Mr. Magin or Mr. Gordon?
A. Yes, sir.
54 Q. How does that apparatus compare with the apparatus that was used by Mr. Boehm while you worked for him and which you have just described?
A. Well, at Boehm's we had it at the side of the counter, not in the center, as at Kehrig's, and the ice box in the cellar was not as thick, but the rest was all the same.
55 Q. What was it you had at the side of the counter in Mr. Boehm's and which was at the middle of the counter at Mr. Kehrig's, as you say?
1034 A. The apparatus to draw the beer.
56 Q. Whereabouts did you keep this air pump in Mr. Boehm's saloon?
A. Behind the counter.
57 Q. Did the working of the apparatus used by Mr. Boehm in any way differ from that used by Mr. Kehrig?

(Objected to as leading.)

A. Not as I can see.
58 Q. Could you always draw a nice cool glass of lager with Mr. Boehm's apparatus?

(Objected to as leading.)

A. Yes, sir.
59 Q. Did you ever have any difficulty in drawing beer with Mrs. Boehm's apparatus while you used it?

(Objected to as leading.)

A. The pump got out of order once in awhile.
60 Q. Is that the only difficulty there was?

(Objected — as leading.)

A. That is all.
61 Q. You will please look at this model—Gordon Model Ex-

hibit—and state how that compares with the apparatus used by Mr. Boehm in his saloon.

A. Well, as I said before, we had this box (pointing to the upper ice box) on the side—the apparatus—the whole thing on the side of the counter, and instead of them faucets we had wooden ones. The other is about the same.

62 Q. Was the upper ice box used by Mr. Boehm lined? And, if so, you may state with what material.

(Objected to as leading.)

A. It was lined with sheet iron, I guess; I don't know; with sheet iron or galvanized iron; I can't tell.

Adjourned to Thursday, April 26th, 1883, 11 a. m.

Parties appeared as before.

1035 And, in answer to cross-interrogatories propounded to him by GEORGE B. SELDEN, Esq., counsel for Mr. Magin, he saith:

63 X Q. How long have you worked for Kehrig?

A. About eight months this last time.

63½ X Q. Have you ever done anything else but tending bar?

A. Yes, sir.

64 X Q. What?

A. Painting. My trade is painter.

65 X Q. Where did you work before you went to Kehrig's?

A. Worked at Boehm's.

66 X Q. How long did you work at Boehm's at this time?

A. About a year and a half.

67 X Q. When did you leave Boehm's to go to Kehrig's?

A. I guess it was the latter part of August or the beginning of September. I don't know exactly.

68 X Q. Where did you work before you went to Boehm's this last time?

A. I was cigar agent then.

69 X Q. How long were you a cigar agent?

A. About six months.

70 X Q. When was this beer-cooling apparatus put in for Kehrig?

A. It was put in about last June, I guess?

71 X Q. Before you went there?

A. Yes, sir.

72 X Q. Do you know whether Kehrig has paid any money to the association of saloon-keepers who are defending this suit?

(Objected to as irrelevant and incompetent.)

A. All I know is that they put it in; so he told me.

1036 73 X Q. Question repeated.

A. I don't know that—I think he did. They put it in and he paid for it.

74 X Q. Question repeated.

A. I wasn't there when he paid it; I don't know that.

75 X Q. Now, this plain question has been asked you three times. I am going to ask you again. Will you, Mr. Examiner, please read the question?

A. I don't know nothing about that.

76 X Q. You haven't told anybody that Kehrig had contributed anything towards the defense in this suit?

A. No, sir.

77 X Q. You are quite sure of that, are you?

A. Yes.

78 X Q. You haven't told anybody that Kehrig had helped to pay to defend McKay?

A. No, sir.

79 X Q. Were you there at Boehm's when this old apparatus was taken out?

A. Yes, sir.

80 X Q. What became of the old stuff?

A. Mr. Schaub took the pipes along.

81 X Q. Did he take away the upper ice box?

A. No; he took the pipes away.

82 X Q. Did he take away this galvanized-iron pipe you talked about on your direct examination?

A. That I don't know if he took that along. He took away the other pipes.

83 X Q. State as near as you can when this old apparatus was thrown out.

(Objected to on the ground that there is no evidence in this case that this apparatus was thrown out, the evidence being that it was taken out.

A. I guess it was in 1881.

84 X Q. What time in the year 1881?

1037 A. In spring, I guess.

85 X Q. How did Boehm draw his beer after this apparatus was thrown out?

A. He had another ice box built and put the air pressure on top of the keg.

86 X Q. Do you mean put the air pump in the ice box?

A. Yes, sir.

87 X Q. Did this old apparatus of Boehm's have any coolers in the upper ice box?

A. Yes, sir.

88 X Q. How large were they?

A. As near as I can state they were about fourteen or fifteen inches long and about an inch and a half in diameter.

89. Did Kehrig have any coolers in the upper ice box?

A. No, sir.

90 —. In this old apparatus of Boehm's how is the galvanized iron pipe connected with this wooden box?

A. It was soldered on, on the bottom—I mean on the top of the bottom. It was laid over about three-quarters of an inch and then soldered.

91 X Q. You mean the upper end of the galvanized-iron pipe was soldered to the metal lining of the upper ice box as you have described?

A. Yes, sir.

92 X Q. It was first bent over and soldered to the lining; is that right?

A. Yes, sir.

93 X Q. Now, how was the lower end of this galvanized-iron pipe fastened to the wooden pipe you have talked about?

A. I never looked at that.

94 X Q. You don't know how that part of the apparatus was fixed?

1038 A. I don't know how it was fastened.

95 X Q. Was there any jacket outside of this galvanized-iron pipe—something surrounding it to keep the heat out?

A. Not around the galvanized-iron pipe.

96 X Q. Kehrig has a jacket around the pipe of his apparatus, hasn't he?

A. Not upstairs; where I can see it.

97 X Q. You haven't paid much attention to the construction of these devices; all you wanted to do was to draw beer through them; is that so?

A. Yes; I never looked over Kehrig's.

98 X Q. Nor Boehm's?

A. Yes; I have seen Boehm's.

99 X Q. When you were using Boehm's apparatus was there any water in the upper ice box?

A. No, sir.

100 X Q. You are sure of that, are you?

A. Yes.

101 X Q. What made Boehm take this old apparatus out?

A. Well, there was a good many kicking about it; they didn't like the beer through the pipes.

102 X Q. Give the name- of the parties who kicked.

A. That I don't know.

103 X Q. Don't you know the name of any of Boehm's regular customers at this time before he took it out?

A. I can't remember it; you find a good many kicking now the same way.

104 X Q. You say that there were a good many kicked about Boehm's apparatus. Can't you give the names of a few?

A. Well, there is a fellow by the name of Gilliard; he kicked about it, and he put them in afterwards; Henry Geck; he is

1039 kicking to-day yet; he didn't go to no place where they are. There is Murrow; I don't know his first name; well, I can't think of the names now.

105 X Q. Have you talked to Kehrig about this old apparatus of Boehm's?

A. Yes.

106 X Q. How many times?

A. I talked to him when he got it put in.

107 X Q. And how many times since?

A. I don't know.

108 X Q. Have you talked to him since your examination yesterday?

A. No.

109 X Q. Have you talked to Boehm about this old apparatus since you began to work with Kehrig?

A. I didn't to Boehm. The bartender told me one night—the one that is there now—that he was down here as a witness, and that I had to go. All I said, Well, if I have to, I'll go; that was all that was spoken.

110 X Q. Whom else have you talked to about this old apparatus of Boehm's?

A. Well, some have come that I have spoke to; I can't remember their names; when they asked me I spoke about it, but I don't know their names; it was a new thing and a good many spoke about it.

111 X Q. Was this at Kehrig's or at Boehm's?

A. At Boehm's.

112 X Q. Whom have you talked with about this old apparatus since you went to Kehrig's?

A. That I don't know.

113 X Q. Have you talked to good many?

A. No.

114 X Q. How many?

A. Once in awhile somebody come in and asked if we had a pump; that they didn't like the beer with pump; they like to see it come from a wooden faucet.

1040 115 X Q. You mean to say that since you have been to Kehrig's you have not talked with anybody about this old apparatus of Boehm's?

A. Only to Kehrig.

116 X Q. Have you talked with Mr. Gordon at any time about this old apparatus of Boenm's?

A. Not as I know of.

117 X Q. Did you not tell him that beer out of Boehm's apparatus was not fit to drink?

A. I never did.

118 X Q. You are quite sure of that?

A. Yes; I never said anything like that.

119 X Q. Did you not tell Mr. Gordon that Boehm's customers wouldn't drink the beer from this old apparatus?

A. Well, he been in there one time—into Boehm's. I haven't seen Mr. Gordon but twice in five years, and wanted Mr. Boehm to sign for St. Paul-street sewer, and I asked him how the patent was getting along. I says, You got a thing now what others had years ago, and I told him I don't think you made much out of it; that's about all that was spoken. He might have asked me if I personally liked it and I told him "No;" I don't like it to-day.

120 X Q. Did Boehm have any other bartender during any portion of the time that you were there?

A. No, sir.

121 X Q. He didn't have more than one bartender, then, at any time?

A. Not when he had the pump; not during that time.

122 X Q. Have you told anybody since you worked at Kehrig's that Boehm's apparatus was no good?

A. No; I might have told them that any of them ain't no good. They are forbidden in Europe and all over.

1041 123 X *Y*. Have you told anybody since you worked at Kehrig's that this old apparatus of Boehm's was no good, because after you had drawn four or five glasses of beer the beer you drew was warm?

A. I never did, because we had plenty ice.

124 X Q. Have you told anybody that in this old apparatus of Boehm's that the pipes and coolers got clogged up and stunk?

A. No, sir.

125 X Q. You are sure of it?

A. Yes, sir.

126 X Q. Why, if this apparatus worked so satisfactorily, as you say, did Boehm take it out and go back to drawing beer from the keg?

A. Well, as I said before, that there was some speaking about it; they didn't like it; it was a new thing then and they was against it—some of them.

127 X Q. Did Boehm's trade fall of while he was using this apparatus?

A. I don't know; I don't think it did, but the same time they spoke about it always.

128 X Q. Were you subpœnaed to appear here?

A. I was yesterday, about eleven o'clock.

129 X Q. What do you mean—somebody sent for you?

A. Mr. Sullivan was there about eleven o'clock and he showed me a paper; I didn't look at it.

130 X Q. Was this the first time you saw Mr. Sullivan?

A. I saw him once before; he met me on the street and he said he wanted to see me in his office, and I asked him what about, and I told him I had no time, and he was talking to me then. I told him I couldn't meet only Sundays in the forenoon, about eleven. Well, I went down next Sunday and he wasn't there.

1042 131 X Q. How did you happen to know Mr. Sullivan?

A. I know Mr. Sullivan a number of years.

JOSEPH ROSCH.

STATE OF NEW YORK, } *ss:*
County of Monroe, }

On this 26th day of April, A. D. 1883, before me personally appeared the above-named Joseph Rosch and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

MARTIN SELBIG, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by counsel for defendants, JOSIAH SULLIVAN, Esq., as follows, to-wit:

1 Q. What is your name, residence, and occupation?

A. My name is Martin Selbig; age, 25 years; my residence is 13 Campbell street, Rochester, N. Y.; my occupation is tinsmith.

(The complainant waives any objection to the evidence of this witness on the ground that his name does not appear in the answer.)

(It is hereby stipulated by and between the parties herein that the defendants will close their evidence in the above-entitled cases on or before the 15th day of May, 1883, and that the complainant, if he desires to adduce any evidence in reply to defendants' case, will close the same on or before the first of June, 1883, so that the case can be prepared for the June term—the defendants having ten days after the complainant closed his case in reply within which to give evidence which they may deem necessary, and which they shall be entitled to produce under the rules of evidence of this court.)

1043 (It is agreed that notice of final hearing may be served before the closing of the case if necessarry.)

This stipulation made before me on this the 26th day of April, 1883.

C. D. KIEHEL,
Special Examiner and Notary Public.

2 Q. How long have you resided in Rochester?

A. I was born here and have lived here ever since.

3 Q. Do you know John Boehm's saloon, situated on the corner of North St. Paul and Franklin streets?

A. Yes, sir.

4 Q. Did you, at any time—and, if so, you may state when—put in an apparatus in his saloon for drawing and cooling beer?

A. Yes, sir; I helped to put it in. I didn't put it in alone.

5 Q. Question repeated.

A. It is all of seven years ago. Of course, I ain't kept track of it. It is all of that—if not a little more.

6 Q. Whom did you help to put in this apparatus?

A. Mr. Schaub.

7 Q. If you know his first name and place of business you may state it.

A. His first name is Ernest—his place of business is now 226 West Main street, I think. The time we put this in he kept his store at No. 208 West Main street.

8 Q. What part of this apparatus did you work on?

A. Well, I helped, I might say, to put in the whole of it. I helped from the start and finished it.

9 Q. Who else besides you and Mr. Schaub worked on this apparatus?

A. No more tinsmiths worked on it—but some carpenters.

10 Q. If you know their names you may give them?

1044 A. I forgot now. There were two or three of them working there.

11 Q. You may describe this apparatus and state how it was made and put together.

A. Well, I made a drawing which I got here—do you want to see that?

12 Q. You may go on first and answer the question.

A. It was a big box put in the cellar and a smaller one upstairs. There was a galvanized-iron pipe run down from the small box into the big one—not quite down into the big one. There was a wooden casing put about two or three feet above the big box down in the cellar w-ere the iron pipe run into, and I forgot how far the wooden casing run into big box—about one foot to a foot and a half. An iron pipe run into the small box above the bottom of the box about three inches—the small box, I mean, and four pipes. Three or four run down through the galvanized-iron pipe from the coolers upstairs and were connected with the beer barrels in the cellar—in the big box. There were four pipes connected with the coolers—three or four—and onto the faucets to draw beer, and there was an air pump upstairs that run down into the big box—into the air chamber—and there were four rubber tubings—three or four—on the air chamber running to the beer barrels—to the top of the barrels—and there was a *gauge* upstairs that showed the pressure. I think that's all about I remember.

13 Q. Have you made a drawing of this apparatus you have just described? And, if so, you may produce it.

A. Yes, sir; I made and will produce it.

(Witness produces a drawing, which is marked "Defendants' Exhibit Selbig Sketch," C. D. Kiehel, notary public, April 26th, 1883.)

1045 14 Q. Did this pipe which ran from the upper ice box to the lower ice box make a tight air passage?

(Objected to as leading.)

A. Yes, sir.

15 Q. Did you see this apparatus in operation after you put it up?

A. Yes, sir; good many times. I repaired it sometimes.

16 Q. How did it work?

A. It worked good.

17 Q. Did you see beer drawn from it and drink some of the beer?

—. ——.

18 Q. How long did Mr. Boehm use this apparatus?

A. As long as I remember, about five years.

19 Q. During that time did you make any repairs on it? And, if so, you may state what you did.

A. I repaired the beer pipes several times.

20 Q. In what way did you repair the beer pipes?

A. I cut the couplings off and cut the weak spots of the pipe off

and soldered the couplings back again, and sometimes if the pipes were too short—the beer pipes—we put a new piece on; that's all.

21 Q. What was the length of these beer pipes?

A. I don't remember; as much as I remember, about ten feet long—about ten or eleven.

22 Q. Did the working of this apparatus give good satisfaction?

(Objected to on the ground that the witness has not been shown a competent witness on such question.)

A. Yes, sir.

23 Q. Did you help Mr. Schaub to put in other apparatuses?

A. Yes, sir.

1046 24 Q. For whom and where?

A. Mr. Rusch—John Rusch—corner Front and Mumford streets, and Mr. Geiring, on West Main street. Mr. Boehm's, Mr. Rusch's, and Mr. Geiring's are the only three.

25 Q. You will please look at this model called Gordon model and examine it and state how it compares with the apparatus you put in for Mr. Boehm.

A. These barrels were laying over instead of standing, as in the model; this iron pipe (pointing to the galvanized-iron pipe) run three inches above the bottom of the small box; was soldered water-tight; and these four beer pipes connected with the coolers—three or four—before they connected with the faucets, and the cold ice water run down the iron pipe from the small box into the big one down in the cellar. The air chamber is about the same as this one—on the same place down in the cellar; and the pump was upstairs; also the gauge.

26 Q. Was the upper ice box lined also?

A. Yes, sir.

27 Q. How about the lower one?

A. I forgot now; I know the bottom was lined; I ain't certain whether the whole box was lined or not.

28 Q. Did you speak to different ones about the apparatus you put in for Mr. Boehm and how it worked?

A. I don't remember any more.

29 Q. What was the diameter of this galvanized-iron pipe?

A. I forgot whether it was four-inch or five-inch.

30 Q. Were you in the habit of going into Mr. Boehm's saloon while he used this apparatus, and did you see him draw beer with it?

A. Yes, sir.

1047 31 Q. You say you drank some of the beer that was drawn by this apparatus. You may state whether the beer was warm or cold.

(Objected to as incompetent and immaterial.)

A. Cold.

32 Q. While Mr. Boehm used the apparatus could you always get a nice, cool glass of lager there?

(Objected to as leading, incompetent, and immaterial.)

A. Yes, sir.

(And, in answer to cross-interrogatories proposed to him by GEORGE B. SELDEN, Esq., counsel for complainant, he saith :)

33 X Q. Did you learn your trade with Mr. Schaub?

A. Yes, sir.

34 X Q. How long since you left working for Schaub?

A. It will be three years next month.

35 X Q. Were you working for Schaub when this old apparatus of Boehm's was torn out?

A. Well, the last time?

36 X Q. Yes; when it was taken out.

A. I worked for him the time it was taken out on West Main street and was repaired and put down in his new saloon, corner North St. Paul street and Franklin street.

37 X Q. Then this apparatus was taken out once, repaired, and put in again?

A. Yes, sir; in different shape; improvements made on it, and then he used it in the new building as long as I worked for Schaub, and I don't remember that he took it out; I left Mr. Schaub. It was in the saloon as long as I worked for Mr. Schaub.

38 X Q. In the apparatus which you say you helped Schaub put in for Geiring on West Main street was there a drip or waste pipe separate from the galvanized-iron pipe?

1048 A. Yes, sir; a waste pipe that run into a conductor pipe that run into the cellar from the roof.

39 X Q. In Geiring's apparatus how far did the galvanized-iron pipe run into the lower ice box?

(Objected to on the ground that there is no evidence in this case that Mr. Geiring had a lower ice box.)

(Objection objected to as instructing the witness.)

A. I don't know whether he had a lower one or not; if I ain't mistaken he didn't have any.

40 X Q. Was this waste pipe which you say you had in the Geiring apparatus to carry the water away from it connected with the upper ice box?

A. Yes, sir.

41 X Q. Was there a similar waste pipe in Rusch's apparatus connected with the upper ice box?

A. There was a waste pipe; the same as Giering's, and that run into the sewer. If I mistake not it did not run into the conductor pipe the way Geiring's did.

42 X Q. In Geiring's apparatus did the galvanized-iron pipe reach above the bottom of the upper ice box?

A. It reached up higher than the waste pipe did. I ain't certain whether the waste pipe run into the box a little way; I am not sure. I am sure that the galvanized-iron pipe went in the box higher than the waste pipe did, so there couldn't no waste water get through the iron pipe.

43 X Q. Was Rusch's apparatus arranged the same way?

A. I think the waste pipe run in the same as Geiring's. We put no galvanized-iron pipe straight up through the floor on account of the beam or a joist. We had to run the beer pipes through the side of the box and through the floor in the lower ice box; an iron or tin pipe—I forgot now which—run up through the floor; I forgot how high it run up above the floor. I ain't certain whether
1049 that pipe that run up from the lower box—whether it run above the floor or even with the floor—the floor of the store or saloon, I mean; that's all.

44 X Q. What become of this old apparatus of Geiring's?

A. From West Main street he has moved it to—I forget the name of the village—and if I ain't mistaken the place where it has been burned down. That's all I know of it.

45 X Q. What became of this old apparatus of Rusch's?

A. I know Mr. Rusch has used it for some time; I have repaired it some time, and I don't know whether he has got it now yet or not; I ain't been in his place for some time.

46 X Q. Which apparatus was put in first, Boehm's or Rusch's?

A. Boehm's.

47 X Q. Which were put in first, Rusch's or Geiring's?

A. I think Geiring's. I ain't certain.

48 X Q. Was Geiring's before or after Boehm's?

A. After Boehm's. I ain't certain whether Geiring's was put in before Boehm's.

49 X Q. You think it was afterwards?

A. I ain't certain, because I don't know whether Boehm'- was in before Geiring's the first time or not. I know Boehm's was put in before Geiring moved out of town. I don't know the name of the village. I forgot. I think it was Penfield.

50 X Q. Did Rusch have any coolers in his upper ice box?

A. Yes, sir.

51 X Q. How many?

A. Three or four if I ain't mistaken.

52 X Q. How large were they?

1050 A. They were about two inches in diameter, and I ain't certain how long they were—six or eight inches.

53 X Q. Same size as those in Boehm's apparatus?

A. About the same size.

54 X Q. What were these coolers put in for?

A. These was put in on account of beer not being cold enough in the pipes, so that coolers that laid in the ice—to have more beer ahead to keep it cool.

55 X Q. All three of these upper ice boxes—Boehm's, Rusch's, and Giering's—were substantially the same?

A. The beer pipes, that was about the same; the rest of it was some difference.

56 X Q. Anything more than a difference in size or number of coolers or faucets?

A. These was about alike in the size of the box and the number of faucets—about the same.

57 X Q. What was the size of these beer pipes that brought the beer up from below?

A. They were about half inch inside—little more or less.

58 X Q. How thick was the pipe?

A. It was about three-quarters of an inch outside.

Adjourned to Friday, April 27, 1883, 10 a. m.

Parties appeared as before.

59 X Q. What was the next work you did for Mr. Schaub after he put in this device for Mr. Boehm?

A. Well, sir, I don't remember.

60 X Q. Do you remember what you did for Mr. Schaub just before he made this apparatus of Boehm's?

A. No, sir.

61 X Q. How long had you worked for Schaub before this apparatus of Boehm's was put in?

A. About a year or two.

1051 62 X Q. Can you remember any particular job of work you did for Mr. Schaub before this device of Boehm's was put in?

A. I don't remember, unless only Mr. Giering's if that was put in before Mr. Boehm's.

63 X Q. You say this galvanized-iron pipe in Boehm's apparatus was four or five inches in diameter. Was it the same size all the way down to where it joined with the wooden pipe below the floor of the saloon?

A. It was about the same size; it might have been a very little difference.

64 X Q. How was this galvanized-iron pipe connected with the wooden pipe which ran into the lower ice box?

A. The wooden box slipped over the galvanized-iron pipe and it was packed perfectly air-tight.

65 X Q. Was there any jacket or covering outside this galvanized-iron pipe in Boehm's apparatus?

A. Not that I know of, unless that wooden box.

66 X Q. That only covered the iron pipe at the joint between the two?

A. It connected with the iron pipe about a foot or a foot and a half if I ain't mistaken; I don't know any more.

67 X Q. Was there an elbow at its lower end?

A. A little one.

68 X Q. How far did this galvanized-iron pipe run into the lower ice box above the bottom of it?

A. It didn't run into the box at all; it run into the wooden box.

69 X Q. How far did this galvanized-iron pipe run into the upper ice box above the bottom of it?

A. It run about the same height as the coolers.

70 X Q. How much was that?

A. Two or three inches.

1052 71 X Q. All three of these upper boxes—Boehm's, Geiring's, and Rusch's—were alike in this respect, were they?

A. No, sir.

72 X Q. What was the difference between them?

A. Rusch's run through the side and Geiring's was the same as Boehm's, only there was an extra waste pipe in Geiring's.

73 X Q. Then there wasn't any waste pipe in Rusch's apparatus?

A. Yes; there was.

74 X Q. Did you ever see Rusch's apparatus in use?

A. Yes, sir.

75 X Q. Was there any water in Rusch's upper ice box when it was in use?

A. If I ain't mistaken there was.

76 X Q. How was it with Geiring's in this respect?

A. If I ain't mistaken I think it was the same.

77 X Q. Then all the dirt, impurities, sediment of the ice, must have settled in the bottom of the box, didn't it?

A. I don't remember about that. I think they used to wash the ice before they brought it in and there wasn't much dirt there.

78 X Q. Whatever there was would settle in the box, I take it?

A. I don't know about that; I suppose so.

79 X Q. What was the size of these waste pipes in these different devices?

A. I don't remember; about an inch or two. I don't remember any more.

80 X Q. Were these pipes lead or iron?

A. I don't remember.

81 X Q. In Geiring's device this galvanized-iron pipe run-

1053 ning up above the bottom of the upper ice box prevented the water from the melted ice from running down through the galvanized-iron pipe, did it not?

A. Yes, sir; that was the one on West Main street; I don't know about the one in Penfield or where it was.

82 X Q. And the same result took place in Rusch's upper ice box?

A. I ain't quite sure any more whether the water run down the lower box or not; if I ain't mistaken it didn't; if I ain't mistaken it run in the river. I ain't sure about that.

83 X Q. Now, in Boehm's apparatus if you wanted the water from the melted ice in the upper box to run into the lower ice box why did you make this galvanized-iron pipe to reach up above the bottom of upper ice box?

A. To keep the coolers cold—the beer coolers; to lay them in ice water. The coolers lay in the bottom of the box and the ice water was around them.

84 X Q. Wouldn't the coolers have been kept cooler with the ice lying on them than they would be surrounded by the water?

A. I don't know about that; maybe they changed that pipe and done it that way or not. I ain't sure about that—whether they changed it or not.

85 X Q. Was there a waste pipe connected with Boehm's upper ice box?

A. Not in the first start.

86 X Q. When was the waste pipe put in there?

A. He had none while I worked for Mr. Schaub. I don't know whether they put one in after that or not; after I left Mr. Schaub.

87 X Q. You swear positively that there wasn't any waste pipe in Boehm's upper ice box?

A. The water use to run down the galvanized iron pipe and followed the beer pipes down into the lower ice box and dropped on the beer kegs from the first start.

1054 88 X Q. Question repeated.

A. Not from the first start—not unless that galvanized-iron pipe—that was in from the first start—of course, the water ran down that.

89 X Q. Did you do any of the wood-work of this old apparatus of Boehm's?

A. No, sir.

90 X Q. This galvanized-iron pipe was round or cylindrical, as I understand it?

A. I don't remember whether it was round or a little oval.

91 X Q. Who was bartender at Boehm's when this apparatus of Boehm's was put in?

A. I think it was Toney Kleinhanz, if I ain't mistaken; Mr. Boehm is his uncle.

92 X Q. Have you seen him lately?

A. No, sir.

93 X Q. Now, you say these three upper boxes, Rusch's, Geiring's, and Boehm's, were about the same, and yet you swear that Geiring's and Rusch's upper ice boxes had waste pipes separate from the galvanized-iron pipe, while Boehm's did not have; how do you account for this?

(Objected to on the ground that the witness did not state that those three ice boxes were about alike. He stated they differed in some respects and described how and wherein they differed, and the counsel is not warranted in assuming a fact to exist which is not established in the case).

(Objection objected to as instructing the witness).

A. I don't understand that.

94 X Q. Question repeated.

A. Yes; they had extra pipes, if I am not mistaken; I think they did unless they may changed it.

95 X Q. Question repeated.

1055 A. Well, Geiring's water didn't dare to run down the galvanized-iron pipe on accout of mussing the cellar, as he didn't have no lower ice box, and Rusch's didn't have no galvanized-iron pipe through the bottom on account of the beer pipes running through the side. I don't — whether he had an iron pipe or lead pipe for a waste pipe, and I don't remember whether the water in Rusch's upper box run into the lower box or not. That's all the difference between Geiring's and Rusch's—not Boehm's—because Boehm's run down the iron pipe. I don't remember how many

faucets or coolers each one had. I don't know whether one had more than the other—I forgot—and I ain't quite certain whether Geiring had coolers or not. He use- to have a coil of lead pipe and I don't know whether he got coolers after that or not—he might have got them while I worked for Mr. Schaub or not.

96 X Q. That's all the answer you can give to this question which has been read over to you three or four times?

A. That's all now; of course, it is quite awhile ago; there might be a little mistake in it or not; I don't remember. I haven't kept in my mind so much.

97 X Q. Who first spoke to you about these old devices after you left Schaub's?

A. How, about these machines?

98 X Q. Yes.

A. I don't — whether somebody spoke to me about them after Mr. Schaub or not.

99 X Q. Who asked you to come here and testify as a witness?

A. Mr. Sullivan.

100 X Q. When was this?

A. Well, I don't remember—last winter one time.

101 X Q. Have you talked with Schaub or Boehm about this old apparatus?

1056 A. Not to Boehm. I have spoken to Schaub some time ago.

102 X Q. How long ago?

A. I don't remember for certain whether it is two or thre- months ago.

103 X Q. Did Schaub tell you that he had been here to testify?

A. Not before I was notified of Mr. Sullivan.

104 X Q. You talked with Schaub about this matter after he had been up here to testify?

A. He told me that he was a witness on this machine; that he made it some years ago already. I told him that I helped to make them some years ago.

105 X Q. Then you talked with Schaub how Boehm's apparatus was made?

A. No, sir; I knew that before then. I knew that years ago. I might have said a few words, but I knew all about how it was made before then.

106 X Q. You refreshed your recollection by ta-king with Schaub, did you?

A. No, sir; what I mean I remembered all about it before he ever spoke to me. Of course, I had been there off and on repairing it—the pipes.

107 X Q. In your drawing you represented these colors in the upper ice box at Boehm's as placed together end to end?

A. I didn't mean that way. They laid side by side. I don't remember that they lay in so particularly, but I remember that they did not lay in that way. They would make too big a string. I thought if I marked them up this way to show that they wou-d lay on top of each other, but that they all lay on the bottom of the

box; of course, I don't mean that coolers lay end on end; they lay sideways and I di ln't keep track of that—how they did lay, but I know that they didn't lay end by end. I thought if I
1057 marked them on top of each other they would not appear on the bottom of the box, so I marked them as they appear in the drawing; but they did not lay end to end, but side by side.

108 X Q. Then your drawing does not correctly represent the way in which the coolers lay in Boehm's apparatus and is wrong in this respect, is it not?

A. I made the drawing——

109 X Q. Now answer the question. Is the drawing right or wrong?

(Counsel for defendants objects to counsel for plaintiff interrupting the witness while answering the question, it having a tendency to intimidate the witness, who is a German by birth and not familiar with the English language.)

A. Well, I made the drawing as plain as I could.

110 X Q. You will have to sit here three weeks until you answer that plain question. Is that drawing right or wrong in that particular?

(Counsel for defendants again objects to this manner of intimidating the witness, and counsel is requested to allow witness to complete his answer and to answer the question put to him in his own way.)

(Plaintiff's solicitor objects to the continued effort of evasion and says he shall insist upon an answer.)

A. I made it as plain as I could, and I didn't know no plainer way to make it.

111 X Q. You admit, then, that it is wrong in that respect?

A. Well, of course, if you take it that way, that they lay in one string, I say myself that is wrong. Of course, I didn't see no other way to make it—that's all.

112 X Q. Now, does that drawing show the coolers resting on the bottom of the upper ice box or does it show them some little distance above it?

1058 A. It shows a little distance, but I meant to put them on the bottom

113 X Q. Then your drawing is wrong again in this respect?

A. Yes, sir.

114 X Q. And it is also wrong in that it shows the three faucets one above the other?

A. Yes, sir; they were side by side.

115 X Q. Now, your drawing shows the floor of the saloon as running right through the galvanized-iron pipe, don't it?

A. Well, if you take it that way. I didn't; of course, I meant the pipe to run through as I made the drawing.

116 X Q. Then you made another mistake in your drawing in this respect also, didn't you?

A. Yes, sir.

117 X Q. Did you show this drawing to Mr. Sullivan before you brought it in here?

A. I don't know whether I showed him this one or some other drawing.

118 X Q. Where is that other drawing?

A. Well, sir, I don't know.

119 X Q. Did you give it to Mr. Sullivan?

A. I forgot now whether he has one or not—I ain't quite certain whether he kept it or not—but Mr. Sullivan told me to make a drawing, so I did, and showed it to him. Now, I don't remember whether he has one or not; I know that I had this one here in my coat pocket yesterday, in here.

120 X Q. This is the second drawing you made of this apparatus?

A. It's the second or third, and there has been so many mistakes in them that I didn't care for them; then I made this one as
1059 plain as I could and brought it up here. Of course, I meant to have the cooler laying on the bottom side by side, and the faucets side by side, and the galvanized-iron pipe run through the floor; also the pipe of the pump and the *guage* run through the floor and the barrels laying side by side.

121 X Q. If Mr. Sullivan has not these first drawings you have made, you have got them at home, haven't you?

A. If I have them, I have torn them up and thrown them away. I don't know what has become of them.

122 X Q. Who told you there were mistakes in these first drawings that you made?

A. I think I see it myself. I ain't certain whether Mr. Sullivan said anything or not. I know—I think that Mr. Sullivan didn't see this one; I ain't certain.

123 X Q. Didn't Mr. Sullivan take it out of your overcoat pocket yesterday and look at it before it was put in evidence?

A. Yes, sir; but he didn't say whether it was right or wrong.

124 X Q. Did Mr. Sullivan at any time show you the drawings made by Schaub or Kleinhanz of this old apparatus or copies of the same?

A. I have seen Mr. Schaub's, but I haven't seen Kleinhanz.

126 X Q. When did you see Schaub's before you made this "Defendants' Exhibit Selbig Sketch"?

A. I think I did, if I ain't mistaken.

127 X Q. And did you see Schaub's drawings after you made your first drawings?

A. Not that I know of.

128 X Q. In Boehm's apparatus why didn't you run this galvanized-iron pipe all the way down to the lower ice box instead of using the wooden pipe which you have talked about?

1060 A. I think, of course, we hadn't iron pipe enough with us, and I think they meant to build the lower ice box up to the ceiling; they didn't build it so high, so we were short on pipe.

129 X Q. How did it happen in making this drawing that you made the elbow on the galvanized-iron pipe turn to the left hand, like Schaub's drawing, instead of turning to the right hand?

A. I made it the way I thought it was made there.

130 X Q. When Boehm's apparatus was in use was there any water in the upper ice box?

A. I think there was from the first start, if I ain't mistaken, and I don't know whether they changed it or not.

131 X Q. The barkeeper, Joe Rosch, swears that there was no water in the upper ice box. Which is most likely to be correct, you or he?

(Objected to on the ground that the question is irrelevant and incompetent.)

A. Well, as much as I think, from the first start they had it so that a little water stood in the box, but I couldn't swear to it, that water stood in, but I think it did unless they changed right after it was made—the first make.

132 X Q. Do you know Rosch?

A. I don't know whether I do or not; I might know him by sight.

133 X Q. Now, I want you to go home and bring these drawings that you first made or any and all pieces of them here at 2 o'clock.

A. I could show you the mistakes I made on this drawing.

184 X Q. No; I want the first drawings.

A. Well, I am quite sure that I can't find them; I think I burned them up.

1061 135 X Q. Well, go and look for them and bring them here if you can find them.

(Plaintiff's solicitor gives notice that unless the first drawings made by this witness are produced that he will move at the hearing to strike out the entire deposition of this witness on the ground that the witness has evidently been instructed as to what evidence he should give in this case.)

(Counsel for defendants objects to this unprofessional and illegal manner of attempting to impeach the credibility of this witness.)

136 X Q. Have you looked to see if you could find those drawings?

A. Yes, sir.

137 X Q. Did you find them or any of them?

A. No, sir; I haven't seen a sign of them.

138 X Q. Did you find any of them in Mr. Sullivan's office?

A. No, sir.

139 X Q. Did you look for them there?

A. Yes, sir.

140 X Q. Did you talk to Mr. Sullivan about them during the recess?

A. Yes, sir.

141 X Q. How old were you when you did this work at Boehm's?

A. About eighteen years—little more or less.

Redirect examination:

142 Q. When was it you made those first sketches spoken of?
A. About two or three months ago.
143 Q. How do they differ, if at all, from this sketch, "Defendants' Exhibit Selbig Sketch"?

1062 (Objected to on the ground that the original sketches should be produced.)

A. This door in the lower ice box showed very near to the top of the box and the air chamber showed right through the door; that's all the changes I made.
144 Q. In other respects were the first sketches you made the same as this one?

(Objected to as leading.)

A. Yes, sir; except the door.
145 Q. Did any one assist you in making either of those sketches?
A. No, sir; nobody saw this until Mr. Sullivan took it out of my pocket here—this sketch introduced; the other one I had I showed that to Mr. Sullivan; that's the only one.
146 Q. Did you ever show me this sketch—Selbig sketch—before it was introduced in evidence yesterday?
A. No, sir.
147 Q. Does this Selbig sketch represent the apparatus that was put in Mr. Boehm's saloon as correctly as you can draw it?

(Objected to on the ground that it is improper redirect examination, and on the ground that the witness already testified that the drawing incorrectly represented the apparatus in a number of particulars.)

A. Yes, sir.
148 Q. Are you a German by descent and not very familiar with the English language?

(Objected to on the ground that the defendants cannot discredit their own witness.)

A. I am a German by birth and not very familiar with the English language.
1063 149 Q. You said in answer to questions of plaintiff's solicitor that those coolers rested on the bottom of the ice box in Boehm's apparatus and in the water. Was there anything placed on the top of those coolers? And, if so, you may state what it was.

(Objected to as improper redirect examination.)

A. Nothing but ice that I know of; once in awhile they laid a bottle in to keep cool.

MARTIN SELBIG.

STATE OF NEW YORK, } ss:
County of Monroe, }

On this 27th day of April, A. D. 1883, before me personally appeared the above-named Martin Selbig and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

Adjourned to Thursday, May 3d, 1883, 11 a. m.
Adjourned to Friday, May 4th, 1883, 11 a. m.
Adjourned to 2 p. m., same day.
Adjourned to Saturday, May 5th, 1883, 11 a. m.
Adjourned to Monday, May 7th, 1883, 11 a. m.
Adjourned to Wednesday, May 9th, 1883, 11 a. m.
Adjourned to 2.30 p. m., same day.

Parties appeared as before.

JOHN BOEHM, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by defendants' counsel, JOSIAH SULLIVAN, Esq., as follows, to wit:

1 Q. What is your name, age, residence, and occupation?
1064 A. My name is John Boehm; my age is sixty-three years; my residence is St. Paul, corner Franklin; my occupation is saloon and restaurant keeper.

2 Q. How long have you resided in Rochester?

A. Forty-one years.

3 Q. How long have you kept the saloon and restaurant you now occupy, on the corner of St. Paul and Franklin streets?

A. Eight years in July next.

4 Q. Did you at any time—and, if so, you may state when—use in your saloon an apparatus for drawing and cooling beer?

A. I did use an apparatus in 1877.

5 Q. And how long did you continue using that apparatus?

A. I used that apparatus up to two years ago—the latter part of January or February, about.

6 Q. Who put that apparatus in for you, and about when was it put in?

A. It was put in by Ernest Schaub; the month it was put in, in 1877, I don't exactly recollect now.

7 Q. Was it the fore part of 1877 or the latter part?

A. I think it was either in the spring or summer.

8 Q. Who, if any one, assisted Mr. Schaub in putting this apparatus in your saloon?

A. My nephew, Anthony Kleinhanz.

9 Q. You will please describe that apparatus.

A. Well, it was an app-ratus with four faucets—four coolers—and a pipe connected to each cooler that run from a box through a galvanized-iron pipe and partly wooden pipe down into the lower ice box in the cellar to the faucets of the beer barrels; I mean the

pipes run to the beer barrels; the pipe run down a little over half into the lower ice box. The top box, where the coolers were,
1065 had another box below, where we stored wines and different things to keep cool, and the four pipes from the coolers, they came together in the top ice box to go down into the galvanized-iron pipe; that's about it. The galvanized-iron pipe run through the two boxes—that is, I mean to say it run through the box where the coolers were and through the box where we kept the stuff down through to the lower ice box. I don't mean to say that there were two boxes, but that there was one large box, which was partitioned off.

10 Q. How was the beer forced through those pipes from the keg in the cellar to the bar upstairs?

A. With a pump.

11 Q. What was the length of this galvanized-iron pipe that ran from the upper ice box to the lower one?

A. I can't say exactly; about five feet; it might have been a little more.

12 Q. How long was this wooden pipe which you say the iron pipe ran into?

A. Don't know exactly; I should think between four and six feet.

13 Q. What was the diameter of this galvanized-iron pipe?

A. I don't know. It was large enough to let the four pipes run through it. I don't know the dimensions.

14 Q. Was this galvanized-iron pipe fastened to the wooden pipe? And, if so, you may state how.

A. It was fastened below the joists of the floor; there was the connection.

15 Q. What was the length of those pipes through which the beer ran?

A. I never took any measurement. I should guess it was about fourteen or fifteen feet; it might have been a little less or more.

1066 16 Q. What were they made of and what were their size?

A. What they called tin-lined pipe. I can't state the size now.

17 Q. Did this pipe which you say ran from the upper to the lower ice box make a tight cold-air passage between the boxes?

(Objected to as leading.)

A. It did.

18 Q. Did this apparatus which you have described work satisfactorily?

(Same objection.)

A. It did.

19 Q. What effect, if any, did it have on the beer?

A. It kept it fresh and foamy for a long time.

20 Q. Did it effect the beer in any other way?

A. It did not. It kept it cold; that's all.

21 Q. While you used this apparatus did you always draw fresh, cool beer with it?

(Objected to as leading.)

A. I did.

22 Q. Had you seen any apparatus for drawing and cooling beer before you put this in your saloon? And if so, you may state when and where.

A. I saw two of them. I saw one at Mr. Neuhardt's when he lived on New Main street, and saw another one with Mr. Geiring, on West Main street. The one of Neuhardt's I saw in 1874, and the other one I saw in either 1875 or 1876; I think it was 1875, in the fall.

23 Q. Did you examine Mr. Geiring's apparatus at that time?

A. I looked at it.

24 Q. How was it constructed with reference to yours?

1067 A. Well, I took the pattern from Geiring's and had mine constructed pretty near like; I took the ideas from his.

25 Q. Please look at this model, "Gordon Model Exhibit," and state how this corresponds with the apparatus which Mr. Schaub put into your saloon.

A. That's just like it.

26 Q. Have you ever seen this model before?

A. I have not.

27 Q. Aside from being a saloon and restaurant keeper by occupation have you learned any trade? And, if so, you may state what it is.

(Objected to as immaterial.)

A. I have learned the trade of manufacturing soap, candles, and perfumery before I came to this country.

28 Q. While you had this apparatus in your saloon did you show it to different ones and speak to them about it? And, if so, you may state what was said and give their names as near as you can.

A. I recollect that I showed it years ago to some, but I don't recollect to whom and what was said.

(Question objected to as immaterial.)

29 Q. When you spoke to Mr. Schaub about this apparatus what instructions, if any, did you give him about making it?

(Objected to as immaterial.)

A. To put it up similar to Geiring's and to the best advantage he knew how; I left it entirely to him then.

30 Q. Was either of those ice boxes lined?

A. The upper ice box was lined; the lower one was not lined.

31 Q. Did this galvanized-iron pipe run into the upper ice box? and, if so, you may state how far.

1068 A. It run a little above the coolers.

32 Q. What was the height and length of those coolers?

A. I never measured them.

33 Q. About how much beer would they hold?

A. I can't say; that would rather be a rough guess; never measured them.

34 Q. State as nearly as you can the height and length and how much beer they would hold.

A. They might have been from twelve to fourteen inches long; they might have held a quart or a pint, more or less; I never measured; I mean to say a quart or pint each, more or less. I couldn't say the height; it might have been from two to three inches.

35 Q. What were these coolers made of?

A. Made of copper and Mr. Schaub told me they were lined inside.

(The last part of the answer objected to as hearsay.)

36 Q. How far above the top of those coolers did this galvanized-iron pipe ran?

A. It might have been from one-half inch to one and one-half inch. I don't recollect now.

37 Q. What became of the ice water in the upper ice box?

A. It run through the galvanized-iron pipe and through the wooden box down into the lower ice box in the cellar.

38 Q. Did it also run over the pipes through which the beer ran?

A. It did.

And in answer to cross-interrogatories proposed to him by GEORGE B. SELDEN, counsel for the plaintiff, he saith:

39 X Q. Who was tending bar for you when this apparatus was put in?

1069 A. I think it was Anthony Kleinhanz.

40 X Q. Did you make any changes in the construction of this apparatus while you were using it?

A. Not to my recollection.

41 X Q. Who furnished you the pump which you say you used in connection with this apparatus?

A. Mr. Neuhardt.

42 X Q. How were you drawing beer before you put this apparatus in

A. I had a large ice box behind the counter.

43 X Q. And drew direct from the keg?

A. Yes, sir.

44 X Q. How many kegs did you generally keep on tap when you commenced to use this apparatus?

A. Didn't use no kegs; used half barrels.

(Answer objected to as not responsive and question repeated.)

45 X Q. Question repeated.

A. Two to three sometimes; I kept so many tapped from which I would not draw, so that when my man was away I would not have to get one ready myself when one got empty.

46 X Q. How long was it after you quit using this apparatus before you had it torn out?

A. I used it until I tore it out.

47 X Q. You used it right down until you had it torn out?

A. Yes, sir.

48 X Q. How did you draw beer for your customers while you had this apparatus torn out?

A. Laid the kegs on something right behind the counter and drew it out of them.

49 X Q. What apparatus have you been using for drawing beer since that old device has been taken out?

1070 A. A small ice box.

50 X Q. You keep more than one keg on tap?

A. Yes, sir.

51 X Q. How many kegs do you keep on tap now?

A. One.

42 X Q. Whose beer do you sell?

A. Bartholomay. I have always sold the same since I have gone into this new building on the corner of St. Paul and Franklin streets.

53 X Q. Has your trade been improving for the last year or two since you discontinued to use this apparatus?

A. I don't think that is a fair question. I don't come here to make a report of my business.

54 X Q. You refuse to answer that question, then?

A. I do.

55 X Q. Haven't you told one or more parties that your trade had improved since you discontinued the use of that old apparatus and had gone back to drawing beer direct from the keg?

A. Not to my recollection.

56 X Q. You swear positively to that?

A. I do.

57 X Q. Now, if this old apparatus worked so satisfactorily, as you say, please explain why you threw it out and went back to drawing from the keg direct.

A. Because there was a prejudice at the time against it—against the beer that run through pipes and was forced by air pressure.

58 X Q. Do you not use air pressure now and force your beer?

A. Sometimes I do.

59 X Q. When you were using this old apparatus how often did you have to clean out these coolers in the upper ice box?

1071 A. My orders were to clean them out every five or six days—the pipes and coolers. You couldn't clean the coolers without cleaning the pipes nor the pipes without cleaning the coolers.

60 X Q. Does beer under pressure deposit sediment?

(Question objected to as immaterial.)

A. It forms a little sediment in the pipes as well as in the cooler.

61 X Q. What is the character of this deposit?

A. I don't know, but the pipes after they are used a few days they don't look so nice and glossy.

62 X Q. What is the color of this deposit?

A. That I couldn't say; it is so small that you could hardly see.

63 X Q. Does it adhere to the pipes?

A. A little bit, or else they wouldn't need cleaning.

64 X Q. Does this deposit turn foul and smell bad after awhile if it is left in the pipes and coolers?

A. That I don't know, because my apparatus was constantly in use.

65 X Q. In your old apparatus did you have a jacket or covering outside of this galvanized-iron pipe you have talked about?

A. I did not.

66 X Q. Then and in this respect your apparatus was unlike this model, wasn't it?

A. I couldn't see any extra covering over that.

67 X Q. Do you find any coolers in this model?

A. I don't see any coolers.

68 X Q. Have you not recently given Schaub orders to put in your saloon one of these devices for drawing and cooling beer?

A. I did not.

69 X Q. Have you talked to him about putting one in within the last three or four months?

1072 A. I have.

70 X Q. Did you ask him to give you figures on the cost of it?

A. Not that I recollect.

71 X Q. Have you taken any steps towards having an upper ice box made for a cooling device to be put in your saloon?

A. I have not.

72 X Q. What was the shape of this galvanized-iron pipe in your old apparatus—round or oval?

A. I don't recollect.

73 X Q. State as nearly as you can what its diameter was.

A. I don't recollect the size of it; I never measured it; of course, all it needed was room enough to have the pipes run through.

74 X Q. How big were these beer pipes?

A. I don't recollect the size of them.

75 X Q. Were they an inch thick?

A. They were not.

76 X Q. Did you have any drip pipe from the upper ice box in this old apparatus of yours?

A. I did not.

77 X Q. Was it like Geiring's apparatus in that respect or not?

A. It was similar to Geiring's apparatus. What do you mean by a drip pipe; is that a waste pipe?

78 X Q. Yes, sir.

79 X Q. In Neuhardt's apparatus there was a coil of pipe through which the pipe passed, as I understand it; is that so?

A. I think so; I think there was.

80 X Q. Did ever any other saloon-keeper put in any apparatus like yours, taking yours as a model, with the coolers in the upper ice box and the galvanized-iron pipe running into the upper ice box?

1073

A. I don't know that there is any, because I haven't looked at any others since that time, except Kehrig's, on Main street.

81 X Q. Have you talked with Schaub a good deal about this old apparatus since these suits have been commenced?

A. Since and before.

82 X Q. Talked it all over with him, I suppose; talked all about it?

A. Yes, sir.

83 X Q. Have you talked to Kleinhanz, too, about it?

A. Yes, sir.

84 X Q. Is your new ice box, the one you are using now, standing in the same position where the old one did?

A. It does.

85 X Q. You have the same bar and fixtures generally, except the ice box?

A. Yes, sir.

86 X Q. Haven't made any changes in your bar and fixtures in the saloon, except to throw out this old apparatus and change the ice box?

A. Well, I fixed different things—the working board—made a new working board; renovated generally; painting, etc.; that's all, sir.

87 X Q. Do you know Joe Wolf?

A. I do, sir.

88 X Q. Did Wolf ever see this old apparatus of yours?

A. He may have, but I don't recollect.

89 X Q. Was he in the habit of coming into your saloon sometimes while you had the old apparatus in?

A. He came there, but not often.

1074

90 X Q. Did he at any time put in a beer pump for you?

A. He did.

91 X Q. When was this?

A. It may be three years or three and one-half years ago.

92 X Q. Did you belong to the saloon-keepers' association which is defending these suits?

(Question objected to — the ground that there is no evidence in this case to justify the counsel's assumption and on the further ground that it is immaterial.)

A. I do not.

93 X Q. Did you attend the meeting which Joe Wolf called by advertising in the paper to defend against Magin's patent?

(Objected to as incompetent and immaterial.)

A. I did not.

94 X Q. Have you not contributed some money to the defense in this case?

A. Not any.

95 X Q. Haven't you told one or more parties that you had contributed money towards the defence in these suits?

A. I never did.

96 X Q. You swear to that positively?

A. Yes, sir.

Adjourned to Thursday, May 10th, 1883, 2.30 p. m.

Parties appeared as before.

97 X Q. What year was it when you commenced keeping saloon at your present place?

A. 1875, in July.

98 X Q. Have you talked with Schaub about the old apparatus since he was examined as a witness here?

1075 A. He often talked about this institution with the pump; I don't know whether he talked about this old apparatus or not.

99 X Q. Have you seen Schaub since he was examined as a witness here?

A. I have seen him often since that time.

100 X Q. Has he offered to put in a new beer-cooler for you on these occasions when you saw him?

A. If I should make up my mind to put one in he would like to do the work.

101 X Q. How long does the air-pressure apparatus which you are now using keep the beer fresh in the keg?

A. I haven't tried it, because I can't lay up a keg to see how long it would keep, because it is empty before that time.

102 X Q. Who else have you talked with about this case besides Schaub?

A. I have talked to Mr. Wolf, but that is some time ago; Kleinhanz and Joe Rusch, who were employed by me as bartenders.

103 X Q. Did Kleinhanz tell you about the drawing he made?

A. He said he had to make a drawing.

104 X Q. Have you seen any of these drawings or any copy of them?

A. I think I saw a drawing of it.

105 X Q. How was this galvanized-iron pipe connected with the wooden pipe below the joists; what kind of a joist was it?

A. Well, the wooden pipe run over the galvanized-iron pipe.

106 X Q. Was there an elbow on the galvanized-iron pipe?

A. There was no elbow; it might have run a little slanting, but there was no elbow.

1076 107 X Q. What became of these coolers when this old apparatus was taken out of your saloon?

A. When I took out the old apparatus I think Schaub got the coolers and some faucets and some different things that I didn't need any more.

108 X Q. What became of this galvanized-iron pipe?

A. I don't recollect.

109 X Q. What became of the lower ice box of this old apparatus?

A. That was remodeled and is there yet.

110 X Q. Do you remember anybody except the parties you named that you have talked to about this matter?

A. I think I talked to good many others, but don't recollect who.

111 X Q. When you were using this old apparatus how often did you have to clean out the upper ice box?

A. Whenever there was any sediment from the ice.

112 X Q. How often was that?

A. It depended whether I had clear ice or not; some ice had more sediment than others.

113 X Q. While you used this apparatus did you not find that your trade was falling off?

A. I think I refused that question before to answer, anything in regard to my own business.

114 X Q. You refuse, then, to answer that last question?

A. I'll answer the question.

115 X Q. Well, go on and answer it.

A. No, sir; my trade didn't fall off.

115½ X Q. Your trade didn't suffer, then, from the prejudice of which you spoke yesterday against this kind of apparatus?

A. Not enough to notice it.

1077 116 X Q. You said yesterday you took this apparatus out on account of the prejudice against it, and to-day you say your trade did not suffer materially from the use of this apparatus; how do you reconcile these two statements?

(Question objected to on the ground that the witness did not state that he took this apparatus out on account of the prejudices against it, but stated he discontinued the use of it in consequence of some of his customers finding fault in having beer drawn through those pipes.)

(Complainant's solicitor refers to cross-question fifty-seven of the examination of this witness and the answer thereto.)

A. I took it out to satisfy some of my customers.

117 X Q. Who, for instance?

A. John Viehmann, Mr. Winter; it is those that I recollect now.

118 X Q. How many customers did you have during this time that you used this old apparatus?

A. I didn't keep no record of it.

119 X Q. There were many of them?

A. Good many.

120 X Q. Have you not stated to one or more parties that the reason why you took this old apparatus out was because it wasn't good for anything—it was driving your trade from you?

A. I did not.

121 X Q. You swear that you haven't made any such statements to any parties whatever?

A. Not that I recollect.

Redirect examination:

122 Q. You were asked by plaintiff's counsel in cross-question 105 to state "how this galvanized-iron pipe was connected with the wooded pipe below the joists, what kind of a joint was it,"
1078 and your answer was, "Well, the wooden pipe ran over the galvanized-iron pipe." Now, would you please state more fully how this galvanized-iron pipe was connected and fastened to the wooden pipe?

A. It run over a few inches over the galvanized-iron pipe. Then I ordered Schaub to make it air-tight.

123 Q. Did he make it air-tight? And, if so, you may state how.

A. After it was done I didn't go and see or look at it, because I had confidence in Schaub that he would do it right.

125 Q. Are you a German by birth, and not entirely familiar with the English language?

A. I am a German by birth, and familiar with the English language to some extent.

Recross-examination:

126 X Q. Then you don't really know of *of* your own knowledge whether this joint between the galvanized-iron pipe and the wooden pipe was air-tight or not, since you never examined it, as you say?

A. I don't know, but I had the confidence that my order to make it so was carried out.

127 X Q. Did you ever examine the construction between the galvanized-iron pipe and the lower ice box so that you can say of your own knowledge whether it was a pipe or merely an open trough to support the beer pipes?

A. It was no open trough.

128 X Q Did you ever examine any of the beer-cooling apparatuses put in by Gordon or Magin?

A. I seen one.

129 X Q. Whose was that.

A. Kehrig's, on Main street.

1079 130 X Q. Did you never see the one used by Magin at his saloon on the corner of North Water and Andrews streets?

A. I never did.

Redirect examination:

131 Q. When you examined Mr. Kehrig's apparatus did you go in the cellar and see how it was constructed there, or did you only see that part of it which is upstairs in the saloon?

A. I saw the upper part, and I was down below.

132 Q. Did you go there for the purpose of examining this apparatus, or did you go there for some other purpose?

(Objected to as immaterial.)

A. I didn't go there for the purpose of seeing it, but when I was there I looked at it and paid more attention to the lower ice box than I did to the other machinery.

133 Q. How did this Kehrig apparatus compare with the one you used, put in by Mr. Schaub?

A. It was similar to mine, but I didn't see no coolers.

JOHN BOEHM.

STATE OF NEW YORK, *County of Monroe,* } *ss:*

On this 10th day of May, A. D. 1883, before me personally appeared the above-named John Boehm and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

1080 JANUARY 17TH, 1875—10 a. m.

The complainant appeared in person and by his solicitor, George B. Seldon, Esq.

The defendants appeared by Josiah Sullivan, Esq., their solicitor.

ERNEST J. SCHAUB, being recalled by the defendants, continued to testify:

234 Q. Are you the same Mr. Schaub who has already testified in this case?

A. Yes, sir.

235 Q. I see in your answer to question 8 that you say the large pipe was about from 6 to 7 feet long; which pipe have you reference to?

A. To that large galvanized-iron pipe that is sticking in there that connect- the upper ice box with the lower one; it is made in an oval shape.

236 Q. I also see in your answer to the same question that you divide the length of this pipe into sections, and you say that
1081 "the height from the ceiling of the cellar to the upper ice box was from 18 inches to 2 feet." Was that about the same height of the bottom of the upper ice box from the floor of the saloon?

A. Yes, sir; that was about the same height. It was about 2 feet high (pointing to the Schaub model, placing his finger on the floor which represents the saloon floor and the bottom of the upper ice box).

237 Q. I also see in answer to the same question that you say that "the length of the galvanized-iron pipe was about 3 feet." What did you mean by that?

A. I meant that lower part which is sticking below the floor which goes over slanting.

238 Q. The question repeated.

The witness points to Schaub's model and says: I mean the lower part where that bend commences of the galvanized-iron pipe and is connected in the lower ice box.

239 Q. Have you at my request made a model of this apparatus you made for Mr. Boehm and which he used in his saloon on the

corner of N. St. Paul and Franklin streets? And, if so, you may produce it.

A. Yes, sir; there it is (pointing to the model).

Objected to as immaterial.

The model is offered in evidence, and the same is received and marked "Schaub model."

The model is objected to.

240 Q. I see in your direct testimony that you speak of a wooden pipe which slipped over this galvanized-iron pipe; does the model show such a pipe or casing?

A. It does not.

241 Q. Why did you not place the wooden casing there?

A. Because Mr. Kleinhanz made that afterwards—the carpenter

1082 242 Q. Then the wooden casing was real-y no part of the apparatus?

A. No, sir; no part of the apparatus.

243 Q. Was that wooden casing made by Mr. Kleinhanz after you finished the Boehm apparatus?

A. Yes, sir.

244 Q. About how long after?

A. A week or two.

Recross-examination:

245 X Q. You have made this model from recollection of the device in controversy and without being able to compare the model with device itself?

A. I made it just like Mr. Boehm's was.

246 X Q. When was Mr. Boehm's apparatus taken out of this saloon?

A. Do you mean this I made for him the first time?

247 X Q. Yes.

A. That might be now 4 years ago; something like that. I ain't got my book here to show or else I could show it. I could follow the book down.

248 X Q. When you put this apparatus in Boehm's saloon did you cut a hole through the floor of the saloon for this galvanized-iron pipe you have talked about?

A. Mr. Kleinhanz, the carpenter, done that for me.

249 X Q. How large was this hole through the floor of the saloon?

A. About 4 by 6 inches.

250 X Q. What was the size of the cooler in the upper ice box?

A. About 3 by 10 inches; hold about three quarts of beer.

1083 251 X Q. And the pipes leading to the faucets were connected with one end of these coolers, while the pipes leading to the beer kegs were connected with the other end of the coolers?

A. Yes, sir.

252 X Q. Since your previous examination have you put into any saloons apparatus-s for cooling beer like that you say you put in for Boehm?

A. Yes, sir.

253 X Q. In whose saloon?

A. In Mr. Fisher's saloon.

254 X Q. Is that the only one?

A. I want to first ask Mr. Sullivan whether I shall be pumped out about my business or not; that's what I want to know.

By Mr. SULLIVAN: I think the question, Mr. Schaub, is not objectionable. You can answer it.

A. No, sir; I don't care to tell everybody my business.

255 X Q. Then since your former examination in this case you have not put in beer-cooling apparatuses in any other saloon than Mr. Fisher's?

A. Yes, sir; I did put more in, but I will not state where. The reason is because Mr. Magin is here and he will scare away other jobs. I lost one about two weeks ago—something like that.

256 X Q. Give the names of all the owners of all the saloons in which you have put in beer-cooling apparatuses since your former examination.

A. I don't know whether that is necessary to do so.

257 X Q. Question repeated.

A. I don't think it is necessary to do so; it will interfere with my trade.

258 X Q. You refuse to answer the last question, then?

1084 A. Yes, sir; because I am afraid it might interfere with my trade.

Complainant's solicitor states that at or before the hearing of this case he will move to suppress the entire deposition of Mr. Schaub on the ground of his refusal to answer the questions put to him and hereby gives such motion by the record.

The defendants' counsel states that there is no objection on the part of the defendants to the witness answering the question, and the witness is requested and instructed to answer the same.

The witness says, I am ready to answer the question.

259 X Q. Go on and answer.

A. Mr. Joseph Heslinger; that is all; in Mr. Fisher's apparatus I used wooden faucets.

260 X Q. In Fisher's and Heslinger's beer-cooling devices did you put in the cooler in the upper ice box?

A. No, sir.

E. SCHAUB.

STATE OF NEW YORK, } ss:
County of Monroe. }

On this 17th day of January, 1885, before me personally appeared the above-named Ernest J. Schaub and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KEIHEL,
Notary Public.

The defendants recall ANTHONY KLEINHANZ, who testified as follows:

1085 234 Q. You will please look at the Exhibit "Schaub Model" and state how it compares with the apparatus he put in Mr. Boehm's saloon.

A. It is the same as Mr. Boehm's. All the difference what is on it is that the pipe that runs from the saloon to the lower ice box is a little on the slant, and the part from the upper ice box down to the floor did run straight; this on the model runs slanting.

235 Q. When you say the pipe, which pipe do you refer to; the galvanized-iron pipe or the wooden casings?

A. The galvanized-iron pipe.

236 Q. Who made this wooden pipe or casing that went over the galvanized-iron pipe?

A. I made it myself.

237 Q. Will you make a similar pipe for this model and bring it here this afternoon?

Complainant's solicitor objects that it is incompetent for defendants to change or alter the model which he has offered in evidence and which has been sworn to as correct by two witnesses, and on the ground that the defendants have had ample time in which to prepare any model which he desired to produce.

A. I can't. I am sick.

238 Q. Can you bring it here on Monday?

A. If I am able to get out, of course. I don't feel well.

It is agreed that Mr. Kleinhanz may produce a model of the wooden pipe any time within the coming week.

239 Q. How far did this wooden pipe run above the ceiling of the lower ice box?

Objected to as a repetition of previous testimony.

A. Up to the floor.

240 Q. Which floor?

1086 A. Up to the floor of the bar-room.

241 Q. What distance was the floor in the bar-room from the upper ceiling of the lower ice box.

A. Between 16 and 18 inches.

242 Q. Was that about the height of the joists between the floors?

A. Yes, sir.

243 Q. How far did this galvanized-iron pipe run into the wooden casing?

Same objection as before.

A. Between 2½ and three feet.

244 Q. And how far did this galvanized-iron pipe run into this lower ice box?

Same objection as last.

A. About eighteen inches.

245 Q. For what purpose was this wooden pipe placed over this galvanized-iron pipe?

Last objection repeated.

A. The most purpose what it was for was for keeping off the heat from the furnace, because the furnace pipe came close to the galvanized-iron pipe, and for the other purpose to carry the ice water what come down this galvanized-iron pipe over to the beer kegs and ale barrels.

246 Q. How long after Mr. Schaub put in this apparatus did you make this wooden casing to put over the galvanized-iron pipe?

A. Well, I don't know whether it was a couple of days or a couple of weeks; anyway, after we found out that the heat from the furnace pipe went too close to the pipe then I put it over.

Recross-examination:

247 X Q. What are you working at now?

A. Working for my aunt, Mrs. Boehm.

248 X Q. Does she keep a saloon yet?

1087 A. No, sir.

249 X Q. Did you continue to work as bartender for Mr Boehm up to the time of his death?

A. Yes, sir.

250 X Q. When did he die?

A. It is going to be a year the 20th of this month.

251 X Q. How long was the saloon run after his death?

A. Nine months.

252 X Q. What kind of an apparatus did you use for drawing and cooling beer during the *the* nine months after his death?

A. We had the same as we had some years ago.

253 X Q. The same as represented in the model?

A. The same as the model Mr. Schaub made.

254 X Q. When was that put in?

A. It was put in a year ago last June.

255 X Q. Did you put it in?

A. Yes, sir.

256 X Q. Did you have coolers in the upper ice box the same as before?

A. No, sir.

257 X Q. Is that last apparatus still in the saloon?

A. There is no saloon there any more.

258 X Q. Of what brewery did Boehm buy his beer?

A. Bartholomay's only.

ANTHONY KLEINHANZ.

STATE OF NEW YORK, *County of Monroe*, } ss:

On this 17th day of January, 1885, before me personally appeared the above-named Anthony Kleinhanz and made oath that the fore-

going deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

1088 Adjourned to 2 p. m., same day.

2 P. M.

Parties appeared as before.

It is hereby stipulated that the defendants will close their case during the week ending January 24, 1885, by recalling witness Martin Selbig and calling Mr. Gordon and an expert.

Adjourned to Wednesday, January 21st, 1885, 10 a. m.

WEDNESDAY, *January* 21—10 o'clock a. m.

Plaintiff appeared in person and defendants appeared by counsel, Josiah Sullivan, Esq.

Adjourned, by consent, to Thursday, January 22nd, 10 o'clock a. m.

THURSDAY, *January* 22, 1885—10 o'clock a. m.

Plaintiff appeared in person and defendants appeared by counsel, Josiah Sullivan, Esq.

Witness Martin Selbig also appeared with defendants' counsel.

Adjourned, by consent, to Friday, January 23, 1885, 10 o'clock a. m.

Adjourned, by consent, to Thursday, February 12, 1885, 10.30 a. m.

Plaintiff appeared by his solicitor, George B. Seldon, Esq., and defendants by their solicitor, Josiah Sullivan, Esq.

MARTIN SELBIG was recalled by the defendants and continued to testify as follows:

150 Q. You have already testified in this case?

A. Yes, sir.

151 Q. You will please look at the Schaub model now before you and state how that compares with the apparatus used in Boehm's saloon, about which you have already testified.

A. It compares about the same, except the crook in the
1089 pipe was between the joists, as near as I can remember. I mean the iron pipe where the beer pipes run through, and, if I am not mistaken, I think he had four faucets instead of three. This is all the difference I know of that I can remember.

152 Q. Do you know who put this wooden pipe, "Kleinhanz's Exhibit," over this iron pipe that you have just described?

A. I do not.

153 Q. Was it put on after Schaub put in this apparatus in Boehm's saloon?

A. If I ain't mistaken, it was.

Defendants' solicitor offers in evidence wooden pipe referred to in Kleinhanz's testimony and stipulated that it could be made by Kleinhanz and offered in evidence at a subsequent hearing, subject

to any objections complainant's counsel might see fit to make. The same is received in evidence and marked "Defendants' Exhibit Kleinhanz's Pipe."

Complainant's solicitor objects to the introduction of said model as incompetent and immaterial.

MARTIN SELBIG.

Recross-examination:

154 X Q. You don't know, then, when this pipe was added to Boehm's apparatus?

A. I do not. I haven't seen Boehm's apparatus; not until it was finished.

155 X Q. You are quite sure that Schaub did not put this wooden pipe on Boehm's apparatus?

A. I ain't quite sure.

156 X Q. Does this model agree with the description you gave of Boehm's apparatus when you were examined before, or does it agree with the drawing which you then produced, or does it agree with the drawings you first made and which were rejected by defendants' counsel?

1090 Defendants' counsel objects on the ground of its complicated character and on the further ground that it assumes facts which had not been proven or do not exist in the case; and, furthermore, it is impossible with the defendant's limited knowledge of the English language to comprehend the question, and the plaintiff's counsel is requested to simplify his question by dividing the one he has already asked into two or more questions.

A. It isn't the same as my drawing, but it is pretty near the same; that's all.

157 X Q. Which drawing do you refer to?

A. I don't understand that.

158 X Q. Which one do you mean?

A. I don't understand.

Redirect:

159 Q. Is it the counsel's question you don't understand?

A. It is the word he used I don't understand.

Recross-examination:

160 X Q. Did you help Schaub do any work on this apparatus?

A. I helped him getting it ready in the shop.

Redirect:

161 Q. Did you help him put it in Mr. Boehm's saloon or examine and repair it after it was put in?

A. I didn't help him put it in, but repaired it after it was put in.

162 Q. What repairs did you make on it?

A. I repaired the pipes.

163 Q. What did you do with them?
A. I used to solder them when they used to leak.
164 Q. And was that all you done about them?
A. Yes, sir.
(Signed) MARTIN SELBIG.

STATE OF NEW YORK, *County of Monroe,* } *ss*:

On this the 12th day of February, 1885, before me personally appeared the above-named Martin Selbig and made oath that the foregoing deposition subscribed by him contains the truth, the whole truth, and nothing but the truth.

C. D. KIEHEL,
Notary Public.

1091 *Decision.*

Circuit Court of the United States for the Northern District of New York.

MICHAEL MAGIN *vs.* JOHN J. CARLE.

MICHAEL MAGIN *vs.* JOHN H. LEHMAN.

BLATCHFORD, *J.:*

These are two suits in equity, brought for the infringement of letters patent No. 248,646 granted to Charles Gordon October 25, 1881, for an "improvement in apparatus for cooling and drawing beer." It is the same patent which was involved in the suits of Magin *v.* McKay and Magin *v.* Welker, decided by me in this court August 20, 1885 (24 Fed. Rep., 743). In the opinion in those cases the material parts of the specification and the four claims are set forth and the operation of the apparatus is described. It was there held that, so far as claims 1 and 4 were concerned, the invention was anticipated by an apparatus put in use by one Meinhard in Rochester, New York, in the summer of 1877 and which was continued in use about four years. A description was given of that apparatus, and it was held on the evidence that it was practical and successful and embodied the same principle as that of Gordon; that it was
1092 continued in use for nearly two years after Gordon obtained his patent, and that, although it did not contain the non-conducting jacket surrounding the outer wall of the cold-air passage, which was a feature in claim 3 of the patent, there was no patentable invention in adding a non-conducting jacket to the elements found in claim 1 or those found in claim 4. Infringement of claim 2 was not alleged in those cases. The bills were dismissed on the ground of the prior existence of the Meinhard apparatus.

In the present suits infringement is alleged in each of them of claims 1 and 4 of the Gordon patent. The testimony on both sides taken in the McKay and Welker suits in regard to the Meinhard apparatus is introduced in evidence in the present cases, and voluminous proofs in addition have been taken by both parties in regard to that apparatus.

A careful examination of all the evidence, with the aid of exhaustive briefs for the respective parties, confirms me in the conclusion at which I arrived in the McKay and Welker cases, that the invention embodied in claims 1 and 4 of the Gordon patent existed in the Meinhard apparatus prior to the time when the invention was made by Gordon, and that that apparatus was practical and successful.

The bill in each case must therefore be dismissed with costs.

John R. Bennett and George B. Selden, for the plaintiff; Josiah Sullivan, for the defendants.

Indorsed: Decision, Oct. 28, 1889. Filed Oct. 28, 1889. W. S. Doolittle, clerk.

1093 *Petition on Appeal.*

In the Circuit Court of the United States in and for the Northern District of New York, Second Circuit. In Equity.

MICHAEL MAGIN
vs.
JOHN J. KARLE.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN.

To the honorable the Supreme Court of the United States:

The appeal of the above-named complainant and appellant respectfully shows that the above-named complainant and appellant filed his bills of complaint in the circuit court of the United States in and for the northern district of New York, second circuit, against the above-named John J. Karle and John H. Lehman, defendants and appellees, reciting the grant and issue of letters patent of the United States No. 248,646, for apparatus for cooling and drawing beer, to Charles Gordon October 25th, 1881, and his ownership thereof by assignment from the said Gordon, and charging that the said defendants and appellees and each of them had infringed the first and fourth claims of the said letters patent, and praying for a decree, injunc-
1094 tion, and account; that thereafter the said defendants and appellees appeared and filed answers denying the allegations of the said bills of complaint and alleging certain matters by way of defence, and that thereafter said causes were placed at issue by the filing of replication on the part of the complainant and appellant;

that thereafter, it being understood that both of said causes should be heard and determined together and that the record in one case should be the record in the other, proofs for final hearing were taken by the parties respectively; that thereafter these causes were heard on the pleadings and proofs so taken herein by his honor Mr. Justice Blatchford, associate justice of the Supreme Court of the United States, assigned to and sitting as circuit justice in and for the second circuit, northern district of New York, who afterwards, and on or about October 28th, 1889, filed an opinion denying the prayers of the complainant and appellant for a decree and injunction and account and directing the entry of a decree dismissing the bills of complaint; that in accordance therewith and on the 5th day of December, 1889, interlocutory decrees were entered dismissing said bills of complaint and ordering that each of the above-named defendants and appellees do recover their costs in their respective suits, taxed at $466.60 in each suit, and have due execution and proper process for the collection thereof.

Wherefore the above-named complainant and this appellant appeals from the whole of the said decrees of the said circuit court of the United States in and for the second circuit, in the northern district of New York, and respectfully prays that the decrees of
1095 the said circuit court of the United States and the pleadings, proofs, exhibits, and proceedings in said causes may be forthwith sent to the Supreme Court of the United States, and that the said Supreme Court will proceed to hear the said causes anew, and that the said decrees of the said circuit court and every part thereof may be reversed, and that the said circuit court be directed to enter a decree granting the prayers of the above-named complainant and this appellant for a decree, injunction, and account or for such other decrees as to the said Supreme Court shall seem just.

JOHN R. BENNETT,
Attorney for Appellant.

The appeal is allowed as prayed for, citations to issue, bond having been approved.

Dated 6th day of January, 1890.

WM. J. WALLACE.

STATE OF NEW YORK, } ss:
Monroe County, }

John M. Bardwell, deputy U. S. marshal in & for the northern district of New York, being duly sworn, deposes and says that he personally served the within writ upon Josiah Sullivan, John J. Karle, & John H. Lehman at the city of Rochester, in the northern district of New York, on the 7th day of January, 1890, by leaving with each of them true copies thereof and by showing to
1096 each of them the original.

JOHN M. BARDWELL,
Dep. U. S. Marshal.

ground of the prior

Subscribed & sworn to before me this 7 day of January, 1890.
WM. J. McPHERSON,
[L. S.] *Notary Public in & for Monroe County, N. Y.*

Indorsed: Petition on appeal. Filed Jan. 8, 1890. W. S. Doolittle, clerk.

1097 *Bond on Appeal.*

In the Circuit Court of the United States in and for the Northern District of New York, in the Second Circuit. In Equity.

MICHAEL MAGIN
vs.
JOHN J. KARLE.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN.

Know all men by these presents that we, Michael Magin, of the city of Rochester, in the State of New York, as principal, and George Engert and John Emory Jones, of the city of Rochester, in the State of New York, as sureties, are held and firmly bound unto the above-named John J. Karle and John H. Lehman in the sum of one thousand and nine hundred dollars, to be paid to the said John J. Karle and John H. Lehman; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the fourth day of January, in the year of our Lord one thousand eight hundred and ninety.

1098 Whereas the above-named Michael Magin has prosecuted appeals to the Supreme Court of the United States to reverse the decision and decrees rendered in the above-entitled suits by the judge of the circuit court of the United States in and for the northern district of New York, in the second circuit:

Now, therefore, the condition of this obligation is such that if the above-named Michael Magin shall prosecute the said appeals to effect and answer all damages and costs, if any, as well as satisfy any judgments, if any, or if said Michael Magin shall fail to make said appeals good, then this obligation shall be void; otherwise the same to be and remain in full force and virtue.

MICHAEL MAGIN. [L. S.]
GEO. ENGERT. [L. S.]
JOHN EMORY JONES. [L. S.]

Sealed and delivered and taken and acknowledged this fourth day of January, A. D. 1890, before me—

P. A. COSTICH,
Notary Public.

[L. S.]

UNITED STATES OF AMERICA,
Northern District of New York.

STATE OF NEW YORK,
County of Monroe, } ss:

Michael Magin, being duly sworn, deposes and says that he is a resident of the State of New York; that he is worth more
1099 than the sum of one thousand nine hundred dollars in real estate, situated in said State of New York, over and above all his just debts and liabilities.

MICHAEL MAGIN.

Subscribed and sworn to before me this fourth day of Jan., A. D. 1890.

P. H. COSTICH,
[L. S.] *Notary Public.*

UNITED STATES OF AMERICA,
Northern District of New York.

STATE OF NEW YORK,
County of Monroe, } ss:

George Engert, being duly sworn, deposes and says that he is a resident of the State of New York; that he is worth more than the sum of one thousand nine hundred dollars in real estate situated in said State of New York over and above all his just debts and liabilities.

GEO. ENGERT.

Subscribed and sworn to before me this fourth day of Jan., A. D. 1890.

P. H. COSTICH,
[L. S.] *Notary Public.*

UNITED STATES OF AMERICA,
Northern District of New York.

STATE OF NEW YORK,
County of Monroe, } ss:

John Emory Jones, being duly sworn, deposes and says that he is a resident of the State of New York; that he is worth more
1100 than the sum of one thousand nine hundred dollars in real estate situated in said State of New York over and above all his just debts and liabilities.

JOHN EMORY JONES.

Subscribed and sworn to before me this fourth day of Jan., A. D. 1890.

P. A. COSTICH,
[L. S.] *Notary Public in & for Monroe Co., N. Y.*

STATE OF NEW YORK, } ss:
Monroe County, }

John M. Bardwell, deputy U. S. marshal in & for the northern district of New York, being duly sworn, deposes & says that he personally served the within writ upon Josiah Sullivan, John J. Karle, & John H. Lehman, of the city of Rochester, in the northern district of New York, on the 7th day of January, 1890, by leaving with each of them true copies thereof and by showing to each of them the original.

JOHN M. BARDWELL,
U. S. Marshal.

Subscribed & sworn to before me this 7th day of January, 1890.

WM. J. McPHERSON,
Notary Public in & for Monroe County, N. Y.

Indorsed: Bond on appeal. Approved: Wm. J. Wallace. Filed Jan. 8, 1890. W. S. Doolittle, clerk.

1101 *Stipulation.*

United States Circuit Court, Northern District of New York.

MICHAEL MAGIN *vs.* JOHN J. KARLE. } In Equity.
MICHAEL MAGIN *vs.* JOHN H. LEHMAN. }

It is hereby stipulated that the foregoing papers shall constitute the record to be sent by the clerk of this court to the clerk of the Supreme Court of the United States on the appeals taken to the said Supreme Court in the above-entitled causes, and that all the exhibits in the said causes shall be retained by the clerk of the court until the hearing on appeal in said Supreme Court.

JOHN R. BENNETT,
Counsel for Complainant.
JOSIAH SULLIVAN,
Counsel for Defendants.

1102 [Endorsed:] 5818. United States circuit court, northern district of New York. In equity. Michael Magin *vs.* John J. Karle. Michael Magin *vs.* John H. Lehman. Stipulation. [Stamped:] U.S. circuit court, N. D. of N. Y. Filed Feb. 14, 1890. W. S. Doolittle, clerk. D. C.

1103 *Citation.*

United States Circuit Court, Northern District of New York. In Equity.

MICHAEL MAGIN
vs.
JOHN J. KARLE.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN.

By the Honorable William J. Wallace, judge of the circuit court of the United States in and for the second circuit, in the northern district of New York.

To John J. Karle and John H. Lehman, Greetings:

Whereas Michael Magin has lately appealed to the Supreme Court of the United States from the decrees lately rendered in the circuit court of the United States in and for the second circuit and northern district of New York in favor of you, the said John J. Karle and John H. Lehman, and has filed the security required by law, you and each of you are hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, D. C., on the second Monday in October, A. D. 1890, to do and receive what may appertain to justice to be done in the premises.

1104 Given under my hand, in the northern district of New York, in the said second circuit, this 6th day of January, A. D. one thousand eight hundred and ninety.

WM. J. WALLACE.

STATE OF NEW YORK, } *ss:*
Monroe County, }

John M. Bardwell, deputy U. S. marshal in & for the northern district of New York, being duly sworn, deposes & says that he personally served the within writ upon Josiah Sullivan, John J. Karle, & John H. Lehman, of the city of Rochester, in the northern district of New York, on the 7th day of January, 1890, by leaving with each of them true copy thereof and by showing to each of them the original.

JOHN M. BARDWELL,
Dep. U. S. Marshal.

Subscribed & sworn to before me this 7 day of January, 1890.

{ Seal Wm. J. McPherson, Notary Public, Monroe County, Rochester, N. Y. }

WM. J. McPHERSON,
Notary Public in & for Monroe County, N. Y.

1105 [Endorsed:] U. S. circuit court, northern dist. of N. Y. In equity. Michael Magin *vs.* John J. Karle. Michael Magin

vs. John H. Lehman. Citation on appeal. D. S. N. John R. Bennett, sol'r for comp't, Potter building, N. Y. city.

[Stamped:] U. S. circuit court, N. D. of N. Y. Filed Jan. 8, 1890. W. S. Doolittle, clerk.

1106 UNITED STATES OF AMERICA, *Northern District of New York,* } *ss:*

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 1105, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Michael Magin *vs.* John J. Karle, and in the case of Michael Magin *vs.* John H. Lehman, as the same remain of record and on file in said office and as the same have been agreed upon by the solicitors for the respective parties.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this third day of March, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

Seal of the United States Circuit Court, Northern District N. Y.

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: Case No. 13,994. N. New York C. C. U. S. Term No., 323. Michael Magin, appellant, *vs.* John J. Karle. Case No. 13,995. Term No., 324. Michael Magin, appellant, *vs.* John H. Lehman. Filed March 13, 1890.

150 U.S. 387

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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 84.

MICHAEL MAGIN,
Appellant,

vs.

JOHN J. KARLE,
Appellee.

No. 85.

MICHAEL MAGIN,
Appellant,

vs.

JOHN H. LEHMAN,
Appellee.

ARGUMENT FOR APPELLANT.

JOHN R. BENNETT,
Of Counsel.

Lithgow-Middleditch Co., Printers, 149-153 Leonard St., N. Y.

ANALYTICAL INDEX.

	PAGE.
Infringement of the first and fourth claims,	1
Character of Gordon's invention and construction of claims,	1–2
Date of Gordon's invention June 1879,	2
The prior Wolfe apparatus in Magin's saloon, which was a failure,	3–4
Gordon's invention,	4
Endorsement of it by the Brewers of Rochester,	5
WELKER & MCKAY CASES:	
Extracts from Mr. Justice Blatchford's opinion,	6–7
Meinhard's apparatus as originally constructed did not contain Gordon's invention,	8
Construction of the Meinhard apparatus,	8–10
"Meinhard's Exhibit A" explained,	10–11
The alleged rubber hose added by Meinhard and the impossibility of his having added them, as claimed,	12
Meinhard's regular bartenders were Gunther, Schanz and Guthacher,	12–13
The petition to reopen the Welker & McKay cases	13–25
Comments on the affidavits of Otto Schanz, Raymond Stief, Otto Hahn, Henry J. Wieland, George J. Englert and John V. Englert, in support of the petition,	13–16
Meinhard's testimony overthrown by these affidavits,	17
Comments on the affidavit of Meinhard; saloon bar always closed on Sundays,	17–20
Comments on affidavit of Albert Steif,	20–23
And on affidavit of Cassabeer, Schaub, Barr, Jr.; and of Gilbert, who was Meinhard's partner	24–25
Proofs taken herein.	
"Reasonable doubt" of the prior existence of the Meinhard apparatus	25

The law thereon - - - - - - - - - - 26
Insufficiency of the proofs taken herein to establish the Meinhard apparatus as anticipating Gordon's invention beyond "a reasonable doubt" - - - - - - 27

Discussion of Meinhard's testimony - - - - - 27–82

Meinhard's apparatus as originally constructed and afterwards changed - - - - - - - - - - 27
When the coils were taken out - - - - - - - 28
The tin pipes soldered into the bottom of the upper ice box - 29
Barr, Jr. and Cassebeer examined in the interval between Meinhard's direct and cross-examination - - - - 30
Meinhard's partner, Gilbert, who was not examined - 30–31
Cassebeer's books and bill, which were lost and then found 32
What suggested the rubber hose to Meinard - - - - 33
How the water from the melting of the ice was taken care of before the addition of the rubber hose - - - - 34
Stief's contradiction of Meinhard on this point - - 35
Meinhard's apparatus as constructed by Neuhart - - 37
First alteration, putting in of the coils to keep the beer cool, at Bartholomay's suggestion, and taking them out on complaints of beer tasting bad - - - - - 38–39
In Welker case said took them out because could not clean them well - - - - - - - - - - 39
Bartholomay denies having advised the coils - - - - 39
Stief denies any complaints of the beer - - - - - 40
Coils removed before rubber hose added, - - - - - 40–41
Meinhard testifies Cassebeer removed the coils Summer of 1877; this Cassebeer denies as he did no work for Meinhard until May, 1878, - - - - - - - - 41
Subsequently Meinhard testifies coils were removed in 1878, and that rubber pipes were added before, - - - - 42–43
Comparison of Meinhard's direct and cross-examination, - 44
Entry in Meinhard's books of payment to Cassebeer, - 45
Cassebeer's bill and books and entries contained therein and deductions to be drawn therefrom as to date of the removal of the coils, - - - - - - - - - 46–54
Meinhard's testimony unreliable, - - - - - - 54–55
Barr saw coils in the upper ice-box as late as 1880, - - 55
If Meinhard ever added the rubber hose to his apparatus it was after 1880, - - - - - - - - - - 56
At Bartholomay's request Meinhard examines a Gordon apparatus, - - - - - - - - - - - 56
Coils in the upper ice-box of Meinhard's apparatus as late as 1881 - - - - - - - - - - - - 56

Meinhard's removal from Falls Field - - - - - 57
Improbability of Meinhard's having added the rubber hose - 58–60
Contradiction as to the length of the rubber hose - - 61–62
Length and course of the beer supply pipes - - - - 63
No one assisted Meinhard in placing the rubber hose around the beer supply pipes - - - - - - - - 64
Size of the rubber hose "little over an inch" - - - - 65
Meinhard hydrant connection three-quarters of an inch - - 66–68
Where did Meinhard get rubber hose a little over an inch in diameter - - - - - - - - - - 69
Comparison of Meinhard's deposition in these and the Welker and McKay cases - - - - - - - - 70
In these cases he testifies he never removed the rubber hose - 71
Discussion of Meinhard's contradictions, - - - - 72–73
As to the saloon bar being closed on Sundays, - - - 73–81
Meinhard destroyed by his own testimony, - - - 81

Discussion of Albert Stief's Testimony, - - 82–87

Was in Meinhard's employ during the construction of the apparatus and the rubber hose around the beer supply pipes, was a part of the original construction, - - 82–84
Supply pipes directly connected on to the keg faucet - - 82
Contradictions between Meinhard and Steif - - - 83
Rubber hose, part of the original construction and no changes made by Meinhard - - - - - - - - 84
Gave affidavit at Meinhard's request - - - - - 85
As to his brother Raymond, who was examined by appellant 86
Deductions to be drawn from his testimony - - - 86–87

Discussion of Barr, Jr., testimony, - - - 87–95

Description of Meinhard's apparatus as he saw it about 1878 while soldering one of the pipes in the cellar, - - 87
His former affidavit, - - - - - - - - - 87–88
Did not recognize model of the alleged Meinhard apparatus, 88
Nothing outside of the pipes fastened into the bottom of the upper saloon ice box - - - - - - - - - 88
A metal pipe of some kind surrounded the supply pipes; no rubber hose - - - - - - - - - 89
Did not look into the closet underneath the saloon ice-box. 89–90
Do not know where the water from the saloon ice box went, 90
Again saw the coils in the bottom of the upper ice box about 1880. - - - - - - - - - - - - 90
Effect of Barr's testimony, - - - - - - - 91

Could not state course of the pipes; gave wrong location of cellar ice-box and no recollection of wine cellar, - 92
As to the metal pipe surrounding the supply pipes, - 93
Direct contradiction between Meinhard and Barr, - - 94
Contributed towards the defence of the Welker and McKay cases, being himself an infringer and under guarantee to protect, - - - - - - - - 95–96
Animus and motive of Barr, - - - - - 96

Discussion of Cassebeer's testimony, - - 95–118

Removal of the coils, the only work done by him - - 96
His description of the apparatus - - - - - - 97
Testified at request of Meinhard, with whom he talked; gave affidavit also at his request - - - - - - 98
Conflict between Meinhard and Cassebeer - - - 99
The pipes in the bottom of the upper ice-box - - - 100
Evidently knows nothing of the apparatus - - - - 101
Conflict between the statements of his direct and cross-examination - - - - - - - - - - 102
Uncoupling of the supply pipes - - - - - - - 103
Conspiracy between Meinhard and Cassebeer with reference to their books and bill - - - - - - - - 104
Production of books and bill, - - - - - 105
The coils were removed a year or two years before Meinhard moved from Falls Fields, - - - - - 106
Meinhard moved from there in 1883, - - - - 106
"Can they make me produce that book," - - - 107
Description of books and why he could not deliver them that evening to the examiner, - - - - - 108–109
Production of the books, - - - - - - 110
Meets Meinhard and Sullivan by appointment at Meinhard's saloon and examines book, - - - - - 111
Meeting of the conspirators, - - - - - - 112
What book produced and what it showed, - - - - 113
The lost book and what it contained, - - - - - 114
His first work for Meinhard, - - - - - - - 114
The surprising discovery of the lost account, - - - 115
The items of the different accounts with Meinhard and what they show, - - - - - - - - - - 116
After the surprising discovery of the Gilbert and Meinhard account, Meinhard quickly finds the lost bill, - - 118

As to Schaub's testimony, - - - 118–138

Testified in the Welker and McKay cases as to the alleged Boehm apparatus with no reference whatever to the alleged Meinhard apparatus - - - - - - - - 118–119
Interested and prejudiced - - - - - - - - - 119
General criticism on his general recollection - - - 119
Only casually examined the apparatus after soldering the pipes in the cellar, - - - - - - - - - - 120
His description of the apparatus, - - - - - - 120–121
Apparatus when taken out at Falls Fields, - - - - - 122
When examined in the Welker & McKay cases, - - 122
The saloon ice-box filled with ice and water when he examined it - - - - - - - - - - - - 123
Recollection and want of recollection - - - - - 124
Upper end of beer supply pipes connected directly to the faucets 124
The soldering of the pipes was in the lower ice-box and he only looked in the upper ice-box - - - - - 124–125
His remarkable recollection, - - - - - - 126
Contradicted by both Meinhard and Albert Steif, - - 127
No recollection of the rubber hose connecting the beer supply pipes with the keg faucets in the cellar, - - - - 128
The soldering which he did was close to the couplings on to the keg faucets, - - - - - - - 129
The model which he made, - - - - - - - 130
Where he obtained his information, - - - - 131
What he saw of the apparatus after it was removed, - 131–132
Character of and credence to be given to his testimony - 132
Assisted Gordon in constructing one of his apparatuses for Farquhar, and his ignorance of its principles - - . 133
Instructions given him by Gordon - - - - - - 134
Unreliable character of his testimony - - - - - 134
His conversation with Magin - - - - - - - 135
Which is corroborated by Gordon - - - - - - 136
His attempted explanation of his calling at Magin's - - 137
The Saloon-keepers' Protective Association - - - - 138
Classification of appellee's witnesses - - - - - - 138
Meinhard first learned of the Gordon apparatus from Mr. Bartholomay and his visit to Magin, - - - - - 139–140
Magin's account of the visit, - - - - - - - - 141–142

APPELLANTS' WITNESSES.

Character of the witnesses - - - - - - - - - - 142

Discussion of Schanz' testimony - - - 143–147

One of Meinhard's regular bartenders from 1879 to 1881 - 143

His description of the apparatus - - - - - - - 143
No rubber hose or covering of any kind around the beer supply pipes, - - - - - - - 145
The gas jet in the cellar, - - - - - - 145
Coils still in the bottom of the ice-box in 1881, - - 146
Deductions from his testimony, - - - - 147

Discussion of Raymond Stief's testimony, - 147–153

Worked for Meinhard from 1877 to 1879 when he quit the beer business - - - - - - - - - - 147
Bartender from Spring to Fall of 1879, having charge of the apparatus, - - - - - - - - - - 148
Saloon open Sundays - - - - - - - - - 148
His description of the apparatus - - - - - - 149
No rubber hose or covering of any kind around the beer supply pipes - - - - - - - - - - 150
His testimony most convincing - - - - - - - 151
Coils still in the upper ice box when he left - - - 152
Deductions drawn from his testimony, - - - 153
Meinhard's attempt to interview him, - - - 153

Discussion as to Hahn's testimony, 154–157

Tended bar for Meinhard in 1877 and for four years off and on, 154
And used the beer drawing apparatus, - - - - - 154
During the same time Schanz was there, - - - - 154
His description of the apparatus, - - - - - - - 155
The coils still in the upper ice box when he left, - - 155
No covering of any kind around the beer supply pipes, - 155–156
Deductions to be drawn from his testimony, - - - 156–157

Discussion of George J. Englert's testimony, - 157–160

His employment by Meinhard and was there when the apparatus was put in, - - - - - - - - - - 157
His description of it - - - - - - - - - - 157-158
No rubber hose or other covering around the beer supply pipes - - - - - - - - - - - 158-159
The gaslight in the cellar - - - - - - - - - 159
Englert's discharge in 1878 and the reason for it - - 159
Assisted Meinhard in moving from Falls Fields, - - - 160
Effect of his testimony, - - - - - - - - - 160
His opportunities for knowing fully of the apparatus, - - 161
Deductions to be drawn from his testimony, - - - 162

Discussion of Bartholomay's testimony, 162-163

Remarkable that both the alleged anticipating apparatuses should have existed in Rochester - - - - 160

Discussion of the testimony to the alleged Boehm apparatus and deductions to be drawn therefrom - - - - 163-169

In the
Supreme Court of the Unite
October Term, 1893.

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NORTHERN DISTRICT OF NEW YORK,

In Equity.

MICHAEL MAGIN Appellant vs. JOHN J. KARLE.	No. 5617. 84.
MICHAEL MAGIN Appellant vs. JOHN H. LEHMAN.	No. 5618. 85.

Argument of John R. Bennett, Esq., of Counsel for Complainant.

May it please your Honor :

The defendants are charged with infringement of the 1st and 4th claims of patent No. 248,646, granted and issued to Charles Gordon, October 25th, 1881, for "Apparatus for Cooling and Drawing Beer."

The character of the invention, so far as relates to the 1st and 4th claims, is thus set forth in the specification : p. 2 3

"My invention relates to an improved apparatus, having for its object the "keeping of beer, ale, or other liquid, at a low temperature during the operation "of drawing the same for consumption, and it consists in surrounding the supply "pipe, through which the beer is delivered to the faucet, with a cold air passage, "for the purpose of maintaining a low temperature in the liquid in the supply "pipe."

The apparatus consists of an upper or saloon ice-box provided with a suitable faucet, and a chamber located in the cellar, which

chamber is connected with the upper or saloon ice-box by an air passage, through which passes the beer supply pipe conveying the beer from the keg in the cellar chamber to the faucet in the upper or saloon ice-box. The air cooled by the ice in the upper or saloon ice-box, and the water produced by the melting of the ice, flow down through the air passage, coming in contact with the beer supply pipe, thereby reducing the temperature of the beer contained in and passing through the beer supply pipe. The beer is forced from the keg upward through the beer supply pipe to the faucet by air pressure introduced into the keg by any suitable air compressing apparatus through suitable connections. This construction is covered by the 1st claim, to wit,

"The combination of the ice box D, supply pipe B, faucet C, and the cold air "passage H, surrounding the supply pipes substantially as and for the purposes set "forth;"

and by the fourth claim, to wit:

"The combination of the ice box D, supply pipe B, faucet C, lower chamber F, "and the cold air passage H, communicating between the ice box and chamber "substantially as described."

The patentability and utility of the invention are not denied, besides being conclusively established by the proofs.

Infringement is admitted, and well it might be, as the apparatuses for cooling and drawing beer used by the defendants are substantial copies of the Gordon apparatus, covered by the 1st and 4th claims.

The defense relied on is that of anticipation by the alleged prior structures of John Meinhard and John Boehm, both of Rochester, New York.

Gordon made his invention in June, 1879, and filed his application for a patent about a year and ten months thereafter, to wit, April 23d, 1881, and there is no pretense that he put his invention into public use for more than two years prior to the filing of his application for patent.

To sustain the defense of anticipation, the defendants must clearly establish the existence of either the alleged Meinhard or Boehm apparatus prior to June, 1879—the date of Gordon's invention—and the burden of proof is upon them to establish the fact *beyond all reasonable doubt.* How well they have sustained that burden will be manifest to your Honor as the case develops.

Before proceeding to a discussion of the questions of fact relating to the alleged Meinhard and Boehm apparatuses, let me direct your attention briefly to the history of Gordon's invention, the prior litigation upon his patent, the result thereof, and subsequent proceedings had therein, which, I may very properly say, resulted in the filing of these present bills of complaint, believing, as I do, that it is not only material, but, when compared with the proofs taken under the present pleadings, will lead you to the irresistible

conclusion, that the alleged anticipating structures of Meinhard and Boehm are based solely upon perjured testimony, incited by a most corrupt conspiracy, organized for no other purpose than to defeat the Gordon patent. That Meinhard, Cassebeer, Schwab, and the other witnesses called by the defendants to prove the existence of the alleged Meinhard and Boehm apparatuses, have deliberately falsified the facts in reference thereto is beyond question, and I hope to satisfy your Honor that not one of them is worthy of belief. If I do so satisfy you, then clearly the defense of anticipation fails.

Prior to June, 1879, the complainant, Magin, had in his saloon in the city of Rochester an arrangement—for it could hardly be termed an apparatus—for drawing beer from the keg in the cellar up into the saloon. This contrivance was put in by Joseph Wolfe, of Rochester, New York, and was a complete failure. It consisted of an ice box in the cellar, in which the kegs of beer were placed, beer supply pipes connecting the kegs of beer with the faucets in the saloon, and hair-felt to the thickness of several inches, wound around these beer supply pipes. The beer was forced from the keg upward through the beer supply pipes to the faucet by air pressure, applied in the ordinary way. *There was no upper or saloon ice box, nor any air passage through which the beer supply pipes passed.*

This was Wolfe's perfection of a beer-drawing arrangement or apparatus in April or May, 1879, and I would have you bear it in mind, as it becomes important in the consideration of Meinhard's and Boehm's alleged anticipating apparatuses.

As to this Wolfe apparatus Magin testifies (~~old record, testimony in rebuttal,~~ page ~~45~~ 592):

Ans. 39, "After the apparatus was completed, I commenced drawing beer. I "found that the first glass drawn from the apparatus would all come up in a thick "heavy foam, and I then went to Mr. Wolfe and asked him the reason why this "machine acted in that way. He told me that they all done so; that his was the "same way; that he would draw up a glass of beer and throw it in a measure and "sell it by the quart. He thought I could do the same, but I could not stand it."

He further testifies, that: (record p. 598)

"the foam was caused by the beer being forced up from a cold temperature in the "lower ice-box, through the beer supply pipes, which were not protected by a cold "air passage."

It was at the suggestion of Mr. Henry Bartholomay, President of the Bartholomay Brewing Company, of Rochester, N. Y., that Magin had this Wolfe's arrangement or apparatus for drawing beer put into his saloon; from which it is to be inferred that as late as April or May, 1879, Mr. Bartholomay knew of no better arrangement or apparatus for drawing beer from the keg in the cellar than that of Mr. Wolfe's.

This Wolfe arrangement or apparatus proving a failure, Mr.

Magin brought it to the attention of Mr. Gordon, an experienced brewer and maltster of the City of Rochester.

Mr. Gordon testifies (old record, testimony ~~in rebuttal, page 2~~):

" Mr. Magin had an apparatus there for drawing beer that he said was impracticable ; he didn't think he could use it ; he said he thought he would have to go back to first principles ; that was, drawing from the keg, and I told him that I didn't think he would ; I thought I could fix it for him, and set to work to do it."

* * * * * *

" Ans. 9. I found that he had the pipes running from the faucet to the lower ice-box, and had them protected by hair-felt wound around them. I think the size was four to five inches through when they first put it up, and they added to it until I guess they got it in the neighborhood of seven or eight inches. It is called hair-felt. They used that for a non-conductor."

* * * * * *

" Q. 14. What was the defect in this apparatus that caused Magin to desire a change?"

" A. The pipes will get warm between drawings. Whenever he would rest for five or ten minutes between glasses, the pipes would get warm and the first glass out of them would be all froth, or foam, as they call it ; could not get any beer but would be warm."

Mr. Gordon's attention having been called to the failure of Wolfe's contrivance, and recognizing the great necessity of a perfect beer-drawing and cooling apparatus, he set to work to, and did design and construct such an apparatus for Mr. Magin, completing it in the forepart of June, 1879, and the result was the apparatus shown and described in his patent.

This apparatus was a complete success, and highly satisfactory to both Gordon and Magin. It differed radically, both in its construction and principle of operation, from any beer-drawing apparatus then in use, accomplishing, as it did, the double result of drawing and cooling the beer so as to always have the beer—whether that contained in the supply pipe or in the keg—of a uniformly low temperature, and this by utilizing the air, cooled by the ice in the saloon ice-box, and the water produced by the melting of the ice.

As was to be expected, such apparatus, when brought to the attention of the brewers and saloon-keepers of Rochester, received their unqualified endorsement (before, however, they knew it was patented), and from none came the suggestion that it was not original with Gordon, much less that such an apparatus had been previously in use in the City of Rochester. All gave him credit for having made a valuable improvement, and one long desired; overcoming, as it did, the serious objections that had theretofore made impracticable the drawing of beer from the cellar to the saloon through beer supply pipes. It had been attempted by many, all of whom failed,—Gordon being the first to succeed. Then is it to be wondered at that Gordon's apparatus when made public, met with such a rapid introduction and revolutioned the methods of drawing and cooling beer. That it did revolutionize the methods of drawing and cooling beer, and superseded all other apparatuses for that purpose, is not and cannot be disputed. It

to day stands alone—the one and only apparatus for drawing and cooling beer. If anything further is needed to satisfy your Honor of that fact, consider the extent to which these defendants have carried the litigation. Besides is it not a most remarkable thing to find the brewers of a city like Rochester uniting in a certificate unqualifiedly recommending and endorsing Gordon's apparatus and method of drawing and cooling beer? And yet, such is the fact, as is made to appear by the following certificate, signed by them, to wit: record p. 199

"The undersigned, engaged in the brewing interest, have witnessed the contin-
"ued success of Gordon's Patent Beer Cooler, and do not hesitate to recommend
"and endorse its use. It is a simple, yet effective process for securing uniform
"temperature and giving the best of satisfaction wherever it is used, when proper-
"ly constructed."

Since the spring of 1881, hundreds upon hundreds of Gordon's apparatuses for drawing and cooling beer have gone into use throughout the United States, until to day hardly a saloon can be found which is not provided with one.

Gordon having erected his first apparatus at Magin's saloon, and its great success becoming known, we find many people going there to examine Gordon's apparatus and method of drawing and cooling beer, and among them, John Meinhard, the designer and constructor of one of the alleged anticipating apparatuses. Meinhard visited Magin's saloon in the fall of 1882, carefully examined and had explained to him the construction and operation of the Gordon apparatus, and on leaving took with him one of the complainant's circulars, containing a drawing and detailed description of the apparatus. And we find Ernest Schwab, the designer and contructor of the alleged Boehm anticipating apparatus, working for Gordon in the putting in the Farquhar apparatus in Farquhar's saloon in the City of Rochester, and asking Mr. Gordon if he did not think too much cold air would escape through the opening leading to the upper saloon ice box.

Notwithstanding all this, Gordon's experience was no exception to the rule, for within a short time after he had demonstrated the great success and value of his apparatus and method of drawing and cooling beer, and obtained his patent, he found unscrupulous parties, among them this same Schwab, engaged in infringing his patent; but not then, and not until the late summer or fall of 1882, was it so much as intimated that either Meinhard or Boehm had used a similar apparatus and method of drawing and cooling beer prior to the date of Gordon's invention.

In the spring of 1882 the complainant commenced proceedings in this Court against Eugene Welker and James D. McKay, for infringement of his patent.

These cases were heard by your Honor at final hearing upon the pleadings and proofs, at the Canandaigua term, held in June, 1882, and resulted in decrees dismissing the bills, your Honor

finding Gordon's invention anticipated by the Meinhardt apparatus, as set forth in your opinion filed August 20, 1885.

The defense urged and relied on in those cases was that of anticipation by the alleged prior structures of Meinhardt and Boehm. Precisely as in these cases.

As to the alleged apparatus of Boehm, the proof were so conflicting and unreliable—and the proofs are the same in these cases—that your Honor dismissed it as unworthy of serious consideration.

As to the Meinhard apparatus, you say in your opinion:

"Gordon made his invention in June, 1879. So far as claims 1 and 4 are concerned, the invention was anticipated by an apparatus invented and put in use by one Meinhard, in Rochester, N. Y., in the summer of 1877, and which was continued in use about four years. That apparatus had the upper ice box, the supply pipe, the faucet, the lower chamber, and the cold air passage surrounding the supply pipe and communicating between the ice box and the lower chamber. It had three faucets, each with a supply pipe; each supply pipe led separately to a barrel in the lower chamber, and each was surrounded by a cold air passage created as to its upper part by surrounding tin pipe, and as to its lower part by a rubber hose which embraced closely the lower end of the tin pipe. The water of the melted ice and the cold air flowed down around the supply pipe into the lower chamber. The lower ends of the three pieces of rubber hose went into the lower chamber through a common opening, and it was not tightly closed around them; but the apparatus was a practical and successful one, and embodied the same principle as that of Gordon. It may have been inferior in degree, in utility and perfection, but the invention was there, and the apparatus continued in use for nearly two years after Gordon obtained his patent."

This finding was predicated upon the false yet uncontradicted testimony of John Meinhard, he being the only witness examined by the defendants to prove the existence of the alleged anticipating apparatus, and no attempt was made by the complainant to either contradict or impeach him. His testimony stood alone and uncontradicted.

Thus the questions were presented as to the sufficiency of the testimony of a single witness to establish an anticipation; and if sufficient, did the apparatus described by Meinhard contain the Gordon invention. My brother Selden was of the opinion that it did not, and having confidence in his opinion, he regarded it as a matter of no consequence whether Meinhard's testimony was true or false, and so made no attempt to either contradict it or impeach him. He stated his position in his brief:

"A weak attempt is made by the defendants to prove a case of prior use by the witness Meinhard, but as he admits that there was an open hole in the top of his lower ice box, the matter need not be further discussed."

Certainly it was "a weak attempt," in that it was remarkable that the defendants should have rested that branch of their case upon the testimony of a single witness, and it can only be accounted for upon the theory that Meinhard was the only witness who could and would testify that his apparatus contained the Gordon

invention. Does your Honor believe that the defendants would have relied upon Meinhard's testimony, had it been possible for them to have in any way corroborated his testimony? Certainly not; especially when you consider that they did not know what proofs would be offered by the complainant in rebuttal to overthrow that testimony. Had a single witness been called by the complainant in rebuttal, in contradiction of Meinhard's testimony, it would have presented such a doubt that, under the well-settled rule, your Honor would have undoubtedly held that Meinhard's testimony alone was not sufficient; and was it not fair to presume that, considering the interests at stake, such an attempt would at least be made? I submit that the presumption is that the defendants, when they closed their cases, had produced all that they could produce in support of the Meinhard apparatus; and that such was the fact I shall satisfy your Honor before I conclude my argument.

Now, your Honor found that although the opening into the lower chamber or ice box was larger than was necessary to admit the beer supply pipes, nevertheless

"the apparatus was a practical and successful one, and embodied the same princi-
" ple as that of Gordon,"

and the uncontradicted testimony was that Meinhard had put his apparatus into use in the summer of 1877 and continued its use for about four years.

This brings me to the consideration of Meinhard's deposition, upon which your Honor's finding was based.

He testified that his apparatus was put in by Neuhart in the summer of 1877, and of this there can be no doubt, as he produces two bills from Neuhart showing that the work was done between the 1st and 9th of June, or thereabouts. **But the apparatus as put in by Neuhart did not contain the Gordon invention. It did not contain the air passage, nor any arrangement whatsoever for utilizing the cold air and ice water of the saloon ice box for reducing the temperature of the beer in the supply pipes. It was simply a beer-drawing apparatus, and not a beer-cooling and drawing apparatus. The apparatus, as Neuhart left it was in every way complete, and no provision was made for any additions or improvements, nor were any contemplated.**

The claimed changes, which made it the Gordon apparatus, were not made until the latter part of the summer of 1877; so that the apparatus was first used as put in by Neuhart, and then consisted of

"a small ice-box in the barroom with three faucets; those three faucets are con-
"nected with lead pipes with the ice-box in the cellar; those lead pipes are sur-
"rounded by small tin pipes in the bottom of the upper ice-box."

"Those lead pipes" were the beer-supply pipes conducting the beer from the kegs in the cellar to the faucets in the saloon, in reference to which Meinhardt testified (p. 5, "Defendants' Testimony" in the Welker case):

"22 Q. To what was the upper end of this beer pipe fastened?"
"A. To the faucets."
"23 Q. And to what was the lower end of it fastened?"
"A. The lower end was to be connected with the beer barrels by rubber hose,
"with another faucet at the end of it."
"24 Q. Those were the barrels which contained the beer?"
"A. Yes, sir."
"25 Q. And there was a faucet with a rubber coupling attached to it, placed
"in this barrel, which was connected with the pipe through which the beer ran?"
"A. Yes, sir."

The "small tin pipes in the bottom of the upper ice-box," and soldered to it, were about an inch in diameter and extended a short distance ("about four inches high") both above and below the bottom of the box, and Meinhardt says that the beer supply pipes, which were "about a-half inch in diameter on the outside," passed through them, going down straight through the floor. We were not told why Neuhart put "those small tin pipes in the bot-
"tom of the upper ice-box," nor is there anything to show that Meinhardt knew why they were put there, and considering the structure, it is not only highly improbable, but next to impossible that there were any such pipes. They certainly were not drip or overflow pipes, since the beer supply pipes, passing through them went straight down to the floor, would have made it impossible to put a pail or tub under them to catch the water, and it was hardly intended that the water should run on to the floor; nor were they any protection to the beer supply pipes, on the contrary their use was certainly detrimental, since it necessitated the bending down of the beer supply pipes after entering the upper ice-box through them, so that they rested on the bottom of the ice box, for otherwise the weight of the ice placed upon the pipes would have broken them down, and in all probability, in a very short time, have cut them.

"74 x Q. Were they bent down from the top of the tin tubes as represented in
"the drawing?"
"A. Yes, sir; they were bent down to the bottom of the ice box."

There is no pretense that these "small tin pipes" were put in at Meinhardt's suggestion, with the intention of adding certain improvements, or even with his knowledge. He altogether fails to explain not only the purpose of these small tin pipes, but how, in the apparatus as constructed by Neuhart, the water from the melting ice was to be removed:

There was no way, other than dipping it out from the top, and such was clearly the intention. Therefore, why these tin pipes projecting a short distance above the bottom of the box, with no possible way to catch any water that might pass through them. The only reason that can be suggested for their presence is that they were absolutely necessary to enable Meinhardt to do what he claims he did, and that in all probability is the only foundation for saying that they were there, for without those tin pipes projecting from the bottom of the upper ice box he would have had no way to connect the rubber hose to the upper ice-box. It is hardly to be supposed that Neuhart put them there in anticipation of Meinhardt's adding the rubber hose.

According to Meinhardt, the beer supply pipes, after they entered the upper ice box through these small tin pipes and were bent down on to the bottom of the ice box, were connected by brass couplings to straight pipes leading to the faucets to which they were connected at their opposite ends by similar brass couplings; but within a very short time Neuhart took out the straight pipes in the bottom of the ice-box, replacing them with coils coupled in the same manner, and a very short time thereafter the coils were removed and the straight pipes put back.

Meinhardt testifies (~~"Defendants' Testimony" in the Welker case, p. 9~~ p. 526):

* * * * *

"63 x Q.

"A. We had put in after the first apparatus wasn't quite satisfactory—Mr. "Neuhart had put in coils in connection with the beer pipes, and those have been "taken out afterwards, and we have put in straight pipes again."

"64 x Q. When was it that Mr. Neuhart had put in these coils?

"A. This was done in the summer of 1877.

"65 x Q. How long after the first apparatus was put in were the coils put in?

A. I can't say this—it may be a few weeks afterwards—may be a couple of "months afterwards; I don't recollect now.

"66 x Q. Where were these coils placed—in the upper ice-box?

"A. Yes, sir.

* * * * *

"69 x Q. Did these coils rest on the bottom of the upper ice-box?

"A. Yes, sir.

"70 x Q. How were these coils connected with the supply pipes and faucets?

"A. They were fastened by brass couplings on each end.

* * * * *

"73 x Q. How were the supply pipes connected with the faucets before you used "the coils?

"A. They were connected the same way with the couplings."

Both the straight pipes and the coils connecting the beer supply pipes to the faucets were provided with brass couplings "on each end."

"74 x Q. Were they bent down from the top of the tin tubes as represented in "the drawing?

"A. Yes, sir; they were bent down to the bottom of the ice-box.

* * * * *

"76 x Q. I suppose these coils were covered with water most of the time?

"A. With ice and water.

* * * * *

" 78 x Q. Did the coils work better than the bent pipes?
" A. They kept the beer better—cool—but could not be so well cleansed; there-
" fore, we took them ont again?
" 79 x Q. How long did you use the coils?
" A. Don't know exactly how long, but only a short time.
" 80 x Q. For two weeks or two months?
" A. I can't say."

It appears that these coils were put in by Neuhart within "a few weeks afterwards; it may be a couple of months afterwards" the apparatus was completed, and were there only a short time when they were removed—by whom does not appear; and it was after this that the claimed addition was made by Meinhardt.

The importance of this testimony will be apparent when we come to a consideration of the testimony of Meinhardt and others taken in these causes and with that in view, it is of the utmost importance that your Honor keep in mind that these coils were put in by Neuhart within "a few weeks after" he completed the apparatus, that they rested on "the bottom of the upper ice box" and were "fastened" to "supply-pipes and the faucets * * " by brass couplings on each end," and that they were used "only "a short time," when they were taken out and the "straight " pipes again used."

This apparatus, as constructed by Neuhart, appears to have answered the purpose for which it was intended; at any rate, Meinhardt suggests no defect, either in its construction or operation, and conceding that he made the claimed change he gives no reason for it, and it is certainly most remarkable that he should have found everything adapted to the change without having to make the slightest alteration, nor does he state what, if anything, suggested to him the making of this change or addition.

At request of defendant's counsel, Meinhardt produced a drawing of his alleged anticipating apparatus which was marked "Meinhardt Exhibit A," and in reference to which he was asked (~~"Defendants' Testimony," p. 7, Welker case~~): p. 525.

" 44 Q. How much of this apparatus described on 'Meinhardt Exhibit A' did
" Mr. Neuhart construct?
" A. He constructed all except hose 'h' which I put on myself.
" 45 Q. Then the pipe 'd' (the small tin pipes in the upper part of the ice-box),
" put in by Mr. Neuhart did not run into the lower ice-box?
" A. No, sir, it did not.
" 46 Q. Then when was it that you fastened this rubber hose 'h' to the pipe 'd'?
" A. I think it was in the latter part of the summer of 1877.
" 47 Q. Did the pipe 'd' (the small tin pipes in the bottom of the upper ice-box),
" run into the hose 'h,' and if so, how far?
" A. It runs in about two inches.
" Q. How is it fastened?
" A. It was just drawn over the tin pipe and it was so hard to put it on that
" when on it did not come off."

The tin pipe over which the rubber hose was "drawn" so that it "did not come off" was "about an *inch*" in diameter, and sol-

dered into the bottom of the upper ice box; the rubber hose being drawn over the tin pipe which projected down from the bottom of the box. And here we have, even in this original deposition of Neuhardt's, a vital contradiction, he having previously stated that, the rubber hose—"outside pipe"—ran into the upper ice box.

p. 523.

"26 Q. What was the size of this outside pipe which surrounded the pipe to "which the beer ran?

"A. They were about an inch I should think."

"27 Q. Did this outside pipe run into the upper ice-box, and if so, you may "state how much of it?

"A. It runs into the upper ice-box I should think about four inches high."

"28 Q. And how far did it run into the lower ice-house?"

"A. It just runs into the lower ice-house far enough to run the water into it.

"29 Q. Then, in the water passing out of the upper ice-box into the lower ice-"box, would it run through this outside pipe and over the inside pipe through which "the beer ran?

"A. Yes, sir."

There can be no doubt that the "outside pipe" referred to is the claimed rubber hose surrounding the beer supply pipe and not the small tin pipe in the bottom of the upper ice-box, as that pipe did not run into the lower ice-box (x-Q. 45), and it is distinctly stated that this "outside pipe" did surround the beer supply pipe and run down into the lower ice-box, and through it the water passed from the upper into the lower ice-box.

p. 527.

"83 x Q. How long are those rubber tubes?

"A. About three feet I should say—the rubber hose 'h.'

"84 x Q. What was the diameter of the rubber hose?

"A. I guess it must be about one inch inside; they are about the same inside as "the tin pipes outside.

"85 x Q. What has become of that hose?

"A. There are some of them there—sometimes we had to change them—take off "the old and put on the new.

"86 x Q. How often did you have to change the rubber hose?

"A. Not very often—only when they were in too bad condition—too dirty—we "would have to take them out and wash them or put in new.

"87 x Q. How often did you have to wash them?

"A. I should think about twice a year."

From which it would appear that in "the latter part of the "summer of 1877," Meinhardt himself surrounded the beer-supply pipes with rubber hose an inch in diameter, according to one statement drawing the upper ends over the small tin pipes projecting below the bottom of the upper ice-box, and according to another statement running the upper ends into the upper ice-box about four inches, and in both running the lower ends of the rubber hose into the lower ice box "just far enough to run the water into it," thus forming a cold air and water passage from the upper to the lower ice box.

It is important to bear in mind that the rubber tubes used were "about three feet" long, and "about one inch inside" in diameter, and were with difficulty drawn over the ends of the inch tin pipes projecting from the bottom of the upper ice box, and that "some-

times we had to change them—take off the old and put on the new," that is, change the rubber hose or tubes surrounding the beer supply pipes. This, however, was "not very often—only when they were in too bad condition—too dirty, we would have to take them out and wash them or put in new," and this Meinhardt says he did "I should think about twice a year."

Meinhardt does not say where, or from whom, he obtained the rubber hose which he used for surrounding the beer-supply pipes, nor where or from whom he obtained the rubber hose which he subsequently used when, as he states, "sometimes we had to change them."

By referring to the Meinhardt Exhibit A, it will be seen how utterly impossible it would be for anyone, without assistance, to surround the beer-supply pipes with rubber hose so as to make air passages from the upper to the lower ice-box, and yet it appears from Meinhardt's deposition that he did this without any assistance; in fact without the knowledge of any one, for although this apparatus was—as he claims—in use for "about four years," and up to the winter previous to his examination, which was on December 20th, 1882, he mentions no one who knew either as to his having made the change which he claims to have made, or of the apparatus as it existed with the rubber hose on.

He says that Joe Wolfe put in a new air pump in connection with this apparatus "three or four years ago," which would make it either in 1878 or 1879 when, according to Meinhardt's story, the rubber hose must have been around the beer supply pipes. Yet Wolfe was not examined as a witness although it appears (108 x-Q., p. 13, Old Rec.) that it was at his instigation that Meinhardt gave his testimony. It is impossible to believe that Wolfe could have put in the air pump without his attention being called to the construction and operation of the very apparatus in connection with which he was working, and had the rubber hose been there and he known of it—as he undoubtedly would had they been there—he would have been very quick indeed to testify as to the fact, in corroboration of Meinhardt.

Meinhardt was asked as to how many bar-tenders he employed, and who they were; in reply to which he gave the name of Felix Gunther, and on being further pressed, gave the names of Otto Schanz and Fred Guthacher:

"113 x Q. Who was your bar-tender that you mentioned a few minutes ago?
"A. For a pretty long time it was Felix Guenther; we had him about three "years.
* * * * *
"116 x Q. Do you remember the names of any of your other bar-tenders besides "Guenther?
"A. Yes; there was Otto Schantz and Fred. Guthacher.
"117 x Q. Were these regular bar-tenders?
"A. Yes, sir; we had many others for concerts and picnics."

From which it would appear that Felix Gunther, Otto Schantz

and Fred Guthacher were the regular bar-tenders during the time this apparatus was in use. Yet none of them were called in corroboration of Meinhardt.

Such was the deposition of Meinhardt, upon which your Honor based your finding that the apparatus in his saloon anticipated the Gordon patent.

My brother Selden having, as already stated, rested the case upon the insufficiency of Meinhardt's testimony to establish an anticipation, upon the receipt of your Honor's decision holding it sufficient, at once proceeded to investigate as to its truthfulness. Finding it to be absolutely false, he prepared a petition, setting forth the facts, supported by the affidavits of Otto Schantz and others, which was subsequently presented to your Honor, on an application to reopen the case, which application was denied on the ground:

"That the plaintiff has not shown that he could not, with reasonable diligence, "have obtained, prior to the former hearing, as much of the testimony now sought "to be adduced as is material to the question involved."

The question then involved was as to the truth or falsity of Meinhardt's statement; and that is the question now involved; in determining which, the affidavits presented, both in support of, and in opposition to, the application to re-open the case, play a very important part, for unless I have misjudged the case, the statements contained in the defendant's affidavits, when compared with the statements in the depositions of the same parties given in these causes, will be found so conflicting as to compel your Honor, under the well-settled rule, to entirely disregard their testimony. And this applies with as much force to Meinhardt, as to the other affiants.

All the papers on the application to reopen the cases are offered in evidence and made a part of the record in these cases.

In support of the application we filed the affidavits of Otto Schanz, Raymond Stief, Henry Koehler, Otto Hahn, George J. Englert, Henry J. Weiland and John V. Englert, in denial of the existence of the apparatus as testified to by Meinhard.

Otto Schanz—who Meinhard testified was one of his regular bar-tenders (Old Rec., p. 14)—stated: (affidavit printed p. 15, Complt. Exhibit Book) That he worked as bar tender for Meinhard "from the fall of 1879 till March, 1881, about a year "and a half," and that he "had charge of the bar all of that year "and a half for him;" that he "drew nearly all the beer and had "access to all the premises.' And after describing the exact construction and operation of the beer drawing apparatus then in use in Meinhard's saloon, stated that the beer-supply-pipes running from the kegs in the cellar to the upper ice-box in the saloon were entirely bare and uncovered; that there was no air and water passage from the upper to the lower ice-box, and that the water

had to be dipped out of the upper ice-box; concluding his affidavit with the statement, that

"There was no connection between this ice-room where the beer was kept and the "ice-box in the bar-room, except the lead pipes themselves" (Beer-supply pipes)— "No other pipe or box opening of any kind."

A most positive contradiction of Meinhard's testimony given in those cases, by one who Meinhard himself testified was one of his regular bar-tenders. Of course Schanz being there for a year and a half, must of necessity have known of the exact construction and operation of this Meinhard apparatus. And quite naturally, he was the one, of all others, to whom the complainant would go in search of information as to the Meinhard apparatus; and from him were ascertained the true facts, as set forth in his affidavit.

Raymond Stief stated (~~affidavit printed at p. 17, Complt. Exhibit Book~~), that he worked for Meinhard

"at one time as a bar-tender about nine months or a year steady, and a couple of "years off and on doing Sunday work. It was about 1877, in the spring of the "year I think, that I began to do Sunday work for him, and after about two years "of that off and on work I went to work for him steady and continued about nine "months or a year at that, I think it was the latter part of 1879 that I quit work- "ing for him;"

That he knew of Meinhard's beer-drawing apparatus, and after describing its construction and operation, he stated that the beer supply-pipes

"were not covered or enclosed by anything * * * There was no pipe "or tube or connection of any kind between the ice box in the bar-room and the "ice-room in the cellar, except the separate beer pipes themselves * * * "I saw these pipes many times * * * We always had to dip out from "this ice-box the water that came from the ice as it melted. I used always to dip it "out first thing in the morning and generally the last thing before going away at "night, so it would not get too full and run over the top during the night. " * * * * During all the time I worked for Meinhard--nearly three "years—I had access to all parts of this apparatus. I tapped the beer myself mostly "while I worked there."

Another contradiction of Meinhard's testimony, by another of his regular bar-tenders, who certainly was in a position to, and must have known the construction and working of the apparatus, since he was the regular bar-tender there in 1879 and until the latter part of the year when he left.

Your Honor will understand that one having the apparatus in charge must of necessity have known if there was a water passage from the upper to the lower ice-box, for if there was one, the water from the melting ice would be carried off; if not, it would stand in the upper ice box and have to be dipped out or otherwise gotten rid of. So if it is shown that Schanz, Stief and the other affiants were employed as bar-tenders at Meinhard's, it would seem to follow that they must have known if there were air and water passages from the upper to the lower ice-box, and were

telling the truth when they said there were no such passages, or were deliberately lying, without purpose or motive.

Henry Koehler stated, that he worked for Meinhard

" as waiter for about a year from about June, 1878; it must have been about " fourteen months, for I worked as waiter until August, 1879; then I tended bar " for him for about a year from that time till about August, 1880; after that I tend- " ed bar for him off and on, mostly on Sundays, for a year and a half more."

In describing the apparatus, he stated that the water had to be dipped out of the upper ice box, and that the beer supply

" pipes were bare from where they came down through the floor to where they " went through the partition; that is, they were not covered or enclosed with any- " thing ;"

and that there was no connection

" between the ice box in the bar room and the part of the cellar where the beer was " kept besides these lead beer pipes."

Making the third bartender who gave his affidavit in direct contradiction of Meinhard.

Otto Hahn (affidavit, printed p. 20, Complt. Exhibit Book) stated that he worked for Meinhard as bartender

" from about the summer of 1887 until a year before he went to Chicago"

(he went to Chicago in August, 1881);

" that he did not work every day during that time, but was there most always Sun- " days and on picnics during the three years;

that it was a part of his duties to get the kegs of beer out of the lower ice box and take them up into the garden. He described the apparatus, stating that the water had to be dipped out of the upper ice box; that the beer supply pipes, as they came through the floor and went into the lower ice box, were bare; and

" there was no covering over the pipes in any way."

George J. Englert (affidavit printed p. 22, Complt. Exhibit Book), stated that he commenced working for Meinhard

" about the time he opened the saloon;" that he " did all kinds of work around the " saloon and summer garden connected with it; I used to put the beer in the ice " box in the cellar and tapped the beer, and sometimes work behind the bar; " swept out the bar room; I worked for him about two years doing this; then, for " about three years more, I used to help him out Sundays and picnic days when " they had more than usual to do. I knew the apparatus he had in his saloon for " drawing beer; I saw it when they were putting it in."

And he then describes the apparatus at length, stating that

" there was no outer pipe or covering of any kind around either of the pipes" (beer supply-pipes). " You could see each of these lead supply-pipes all the way from the "bottom of the ice-box down to the floor. * * * No change was made in these pipes " and no other pipe, or hose was put around them during this year. During

" the whole four years from the summer of 1877 to the summer of 1881, I was fre-
" quently in the cellar under the bar, and during the first year of that time, which
" was the second year, I worked there steadily ; I was in the cellar almost every
" day * * There was no change made in these pipes" (beer supply-pipes).
" and no other pipe or hose or covering put around them or either of them during
" the four years from the time the apparatus was first put in, in the summer of
" 1877, until the summer of 1881."

And he concluded his affidavit with a very positive statement that there was no air or water passage of any kind between the upper and the lower ice-box.

The fourth of Meinhard's bar-tenders who made affidavit as to the construction and operation of the apparatus in use in his saloon, and that no such construction as testified to by Meinhardt ever existed.

I have quoted at considerable length from Englert's affidavit, as I shall have occasion to refer to the parts quoted when I come to consider the affidavit of Meinhard filed in opposition to the application to re-open the case.

Henry J. Weiland stated that he

" tended bar for him (Meinhard) when he first opened saloon at Falls Field. I
" was the the first bar-tender he hired except one, I think. I was at
" work for him at about the time he put in his apparatus for drawing beer.
" * * * I was working for Meinard off and on about a year, from the time
" I went there till I quit working."

He describes the apparatus as it was constructed, and says that

" there was no rubber hose around either of them" (beer supply-pipes) "that I ever
" knew of, except that in the ice-room there was a short piece of rubber hose to
" connect each pipe to the keg."

It must be borne in mind that the short piece of rubber hose to connect each pipe with the keg in the lower ice-box was not the rubber hose surrounding the beer supply-pipes here in controversy. Those short pices of hose were used to make flexible connection between the ends of the beer supply-pipes and the faucets, so as to permit of the faucets being readily removed and placed in the kegs in tapping the beer, which could not be done if the lead pipes were connected directly with the faucets.

He further stated :

" There was no connection that I ever knew of between the icebox in the barroom
" and the ice-room down cellar, except the beer pipes themselves. * * I never
" knew any change to be made in that apparatus during that year,"

that is, the year that Weiland worked there.

John V. Englert (affidavit printed p. 28, Complt. Exhibit Book stated, that

" In 1881 I was driving a wagon, delivering beer to customers, and in August
" of that year, I began delivering to John Meinhard, at the Falls Field Saloon,"

that is, the saloon in which was the Meinhard apparatus.

" From that time until the spring of 1882, about the month of April, I was in " his cellar under the barroom in said saloon, at least three times a week, and some- " times oftener. I always had a light when in this cellar, and could see all parts " of it plainly;"

and gave a description of the beer-supply pipes; how they came through the saloon floor into the cellar and passed over into the lower ice-box; and in speaking of those beer-supply pipes, he said:

" These pipes were of some metal; they looked like lead; each pipe was about " half an inch thick. Each pipe was bare all the way from the ceiling to the ice- " box, and not covered by any pipe or anything else. * * There was no " pipe or connection of any kind that I could see between this refrigerator and the " barroom, or the floor of the barroom, except these four lead beer pipes."

Concluding his affidavit with a statement as to its being a part of his business to put the kegs of beer into the refrigerator.

It may safely be assumed that no argument will be necessary to satisfy your Honor that the statements contained in these affidavits completely answered and overthrew the statements contained in Meinhard's deposition. Not only did they present a preponderance of evidence, but evidence of such a character as to make it impossible for anyone to believe for a moment that any such construction of apparatus as claimed by Meinhard ever existed, and this without reference to the fact that Meinhard's testimony stood unsupported.

I take it that, had the only question before you on the application to reopen the case been as to the sufficiency of the affidavits presented in support of the application, an order would have been made granting the application.

Now, what answer did the defendants in those cases make to all of those affidavits?

This is best ascertained by a reference to the affidavits themselves. The affidavits are those of Meinhard, Albert Stief, Ernest J. Staub and William Barr, Jr.; and before considering these affidavits, I again call your Honor's attention to their importance, for, when compared with the statements made by the same parties when examined as witnesses in these causes they make, to say the least, such a contrast as must result in their being totally ignored, and this without reference to any testimony taken herein on the part of the complainant as to the non-existence of the Meinhard apparatus.

Meinhard stated (affidavit printed ~~at p. 341 of Defendants' Rec.~~ p. 534. that he had read the affidavits of Schanz, Koehler, Hahn, the two Englerts and Weiland.

That Raymond Stief worked for him, and that

" he was then a young lad not over seventeen years, and worked as waiter boy in " the beer garden or concert hall, and on Sundays only, except for a week or two " when he assisted my regular bar-tender to wait on the bar in the saloon;"

and then he explained that he "had two bars, one in the concert hall and "the other in my" (his) "regular saloon;" that "the waiter boys in the con- "cert hall had nothing to do with the bar in my saloon, their business was to "serve beer in the concert hall, drawn from the keg, while that drank in the saloon "was drawn from this apparatus."

p. 534

By making it appear that Raymond Stief was employed

"as waiter boy in the beer garden or concert hall, and on Sundays only,"

and that the waiter boys had nothing to do with the bar in the saloon where the apparatus in controversy was located, he undoubtedly placed Stief in a position where he could have known litttle, if anything, of the apparatus. That clearly was his intention; and to make certain of it, he made the further statement, that

p. 534

"The bar in the saloon was always closed on "Sundays, and no beer was drawn from this "apparatus during that time."

A very significant statement when taken in connection with his previous statement, that Raymond Stief worked as

"waiter boy in the beer garden or concert hall and on Sundays only;"

for if true, it would appear that as Stief worked "on Sundays only," on which day the bar in the saloon was closed and no beer drawn from the apparatus, he had no opportunity of knowing as to the working of the apparatus.

Now it is apparent why Meinhard made the statement that the bar in the saloon was always closed on Sundays and no beer was drawn from this apparatus during that time, since it enabled him, as he believed, to most effectually dispose of Raymond Stief. Of course, if Stief only worked there on Sundays and in the concert hall, during which time the saloon proper was closed and no beer drawn from the apparatus, the conclusion would be that he could not have known of the apparatus; and that was the conclusion which it was intended your Honor should draw from Meinhard's affidavit.

Immediately following the statement that

"The bar in the saloon was always closed on Sundays and no beer was drawn from "this apparatus during that time,"

Meinhard made the statement that

p. 534

"Young Rapmond Stief was not our bar-tender and had nothing to do about the "bar or this apparatus, and had no occasion to examine it. He was hired only as "waiter boy for Sunday trade and when we had picnics and parties in the beer "garden."

Meinhard attempted to discredit the statements made by Stief by terming him "a young lad not over seventeen years," at the same time stating that Albert Stief—the brother of Raymond—was the

assistant bar-tender in the saloon proper, and therefore must of course have known all as to the apparatus; but we find that Albert Stief was the "young lad," as he was three years younger than Raymond, which would have made him at the time only fourteen. I refer to this simply to show the desperate character of Meinhard and his willingness to make any kind of a statement required of him to throw discredit upon others.

Of Koehler he said—while admitting that he worked for him—that he p. 535

"was then a lad not more than sixteen years old and worked for us only on Sun-
"days, as waiter boy in the beer garden."

Another lad—although a year older than his assistant bartender, Albert Stief, disposed of as was Raymond Stief by the statement that he was a waiter boy employed only on Sundays, on which day the saloon proper was closed, and the apparatus in controversy not in use.

Again your Honor perceives the signification of the statement that

"The bar in the saloon was always closed on Sundays, and no beer was drawn
"from this apparatus during that time."

It was not an idle statement thrown in as by chance, but a most deliberate statement, made for a studied purpose, and that purpose, the placing of the complainant's affiants in such a position that the only inference would be that they could not have known of the Meinhard apparatus. As we proceed with a consideration of the affidavit, it will be seen that almost every statement contained therein has reference to, and is made to turn largely upon, the statement that the saloon was always closed on Sundays, when the apparatus was not in use.

In endeavoring to account for his failure to give the names of Raymond Stief and Henry Koehler—who, he is compelled to admit, worked for him—when asked in his former testimony for the names of his barkeepers, he states: p. 535

"I did not give the names of the lads Raymond Stief or Henry Koehler,
"because they were not bar-tenders, but only Sunday waiter-boys in the beer gar-
"den, who had no connection with the bar, and consequently would not be likely
"to have any knowledge of the construction of this apparatus;"

but he does not account for his failure to give the name of Albert Steif, who, he endeavors to make it appear, was one of his bar-tenders.

Won't your Honor be surprised if, when we come to a consideration of Meinhard's testimony, given in these causes, it should appear by Meinhard's own admission, that the saloon proper was *always* open on Sunday; that all the beer was drawn from his apparatus, and that both Raymond Steif and Koehler were, at different periods, employed by him as regular bar-tenders, having in charge this apparatus in controversy.

No attempt was made by Meinhard in his affidavit to discredit Schanz, the only reply made to his affidavit being a re-affirmance by Meinhard of the statements contained in his deposition, and a parting fling at Schanz in the statement:

"I verily believe that those affidavits" (complainant's affidavits) "are made "on the representations of said Otto Schanz to whom all those parties are known."

How known to Schanz?

Because they worked at Meinhard's at different periods while Schanz was there.

Of course Meinhard could hardly say that Schanz did not know as to the construction and operation of his apparatus, having in his original deposition stated, that Schanz was one of his regular bar-tenders.

Of Hahn, George J. Englert and Wieland, he said:

"Those parties are some of the same crowd of about forty young lads who worked "for us on Sundays as waiter boys in our concert hall and beer garden, in the same "capacity as the lads Raymond Stief and Henry Koehler;"

disposing of the remainder of complainant's affiants in precisely the same manner as he had disposed of Raymond Stief and Koehler. "Waiter boys," employed only on Sundays, when the saloon was closed, and the apparatus not used, so that they could not have known of the construction and operation of the apparatus. And here we have the remarkable statement, that the construction of the apparatus could not be seen without much trouble and a careful inspection with a lighted candle or lamp, which the waiter boys had no reason or occasion to make. Not a suggestion of anything of the kind in the former deposition, and a statement which, by reference to the drawing—Meinhard Exhibit A, is shown to be without foundation; for there the pipes are shown in such a manner as to be readily noticeable by any one going into the cellar, and such is Meinhard's description of them.

The object of the statement clearly was to discredit, if possible, the statement of those of the complainant's affiants to the effect, that when in the cellar they saw the beer-supply-pipes, and that they were always bare.

Another illustration of Meinhard's willingness to make any statement that occasion required.

Such was the affidavit made by Meinhard; and apart from the statements which I have referred to, the great importance of which will be apparent when I compare them with the statements afterwards made by him when examined in these cases—it was not of a character to in any way strengthen his deposition, upon which your Honor based your original finding.

Albert Stief (affidavit, printed p. ~~334, Deft. Rec.~~), who was twenty-two years old when he gave his affidavit of December 10, 1885, stated that he worked for Meinhard

"for about five years from 1877 to 1882,"

which would make him about fourteen years old when he commenced work there. Rather a young specimen of a bartender. In describing Meinhard's apparatus, he stated that

p. 530.

"These supply pipes" (beer supply pipes "were covered with an inch or an inch "and a quarter rubber hose, which was tightly pulled over the bottom of these tin "pipes and run down and into the lower ice box about eight inches, through which "tin pipes and rubber hose the water in the upper ice box ran over the supply pipes "and into the lower ice box."

There corroborating Meinhard. But immediately following, he makes this statement:

p. 530.

"When we first commenced using this apparatus we used to occasionally dip "out some of the water in the upper ice box, instead of allowing it all to flow into "the lower ice box on account of the ice being dirty, and in order to keep the pipes "and ice box clean.

Which is in direct conflict with the statement made by Meinhard to the effect that the apparatus as *first* used did not have the rubber hose surrounding the beer-supply pipes, and was not provided with any air or water passages between the upper and the lower ice box.

This is an important contradiction which I would have your Honor bear in mind when we come to a consideration of the statements made by Meinhard and Stief in their testimony in these causes.

In reference to his brother, Raymond Stief, he said:

p. 530.

"He was employed as waiter boy to work on Sundays in the beer garden to "help out on picnics and parties given there, and had nothing to do with the bar "where this apparatus was used, except for a week or two; during this time he "helped off and on about the bar."

A similar statement to that made by Meinhard, and as that and the following statements show, made for the same purpose—without, perhaps, Stief knowing it, for it is very evident from a reading of his affidavit that he was simply a tool in the hands of Meinhard and the writer of the affidavit.

Having styled his brother "a waiter boy" employed to work on Sundays in the beer garden, he said:

p. 530.

"He had no occasion to use or inspect this apparatus, and the tin pipes and rubber "hose could not be seen except by a careful inspection, as they were out of sight."

And here, for the first time, we find, that not only could the rubber hose not be seen except by careful inspection, as stated by Meinhard, but that **"they were out of sight."** Bear also this statement in mind when we come to a consideration of the testimony given in these causes, for it becomes important.

And now we come to a statement, which, when we come to a consideration of the statements made by him when examined as a witness in these causes, will establish beyond question that he is not to be believed as to any statement he makes.

"The beer sold in the beer garden was drawn from the keg and not from this "apparatus. The bar where this apparatus was used was closed on Sundays, and "only the beer garden was kept open."

The object of this statement—precisely the same as with Meinhard—was to make it appear that Raymond Stief, as well as the other of the complainant's affiants, being employed only on Sundays, could not have known of the apparatus in the saloon, which was closed on Sundays, when the apparatus was not in use. Undoubtedly that statement was incorporated in his affidavit to corroborate Meinhard on that most essential point.

As to Koehler, he said, referring to the time when he worked at Meinhard's:

"He was then a lad not over 17 years, and worked in the concert hall on Sundays as "waiter boy, the same as my brother Raymond."

Rather a strange statement for one to make who was a year younger than Koehler, whom he terms "a lad."

By referring to Meinhard's affidavit, we find the source of that statement, and a comparison of the statements in the two affidavits, will serve to illustrate the character of Albert Stief, and the importance to be given to any statement made by him:

STIEF'S AFFIDAVIT.	MEINHARDT'S AFFIDAVIT.
"He was then a lad not over 17 years, and worked in the concert hall on Sundays as a waiter boy, the same as my brother Raymond."	"He was then a lad not more than 16 years old, and worked for us only on Sundays as waiter boy in the beer garden, about in the same capacity as young lad Stief."

If time permitted it would be instructive to parallel many of the statements found in the two affidavits.

The remaining statements contained in Stief's affidavit are not of sufficient consequence to justify their being referred to.

Adolph Cassebeer (~~affidavit, printed p. 337, Deft. Rec.~~) a plumber, stated:

"That in the spring or summer of 1878 I made some repairs on the beer-cooling "apparatus used by Gilbert & Meinhard in their saloon in Falls Field, North St. "Paul street, this city. The work I done at that time consisted in taking out three "small coolers which lay in the bottom of the upper ice-box. * * * "After taking out the coolers, I connected the supply pipes again."

Meinhard stated, in his original deposition, that these coolers (coils) were put in in the "summer of 1877," where they remained "only a short time," when they were taken out and replaced with straight pipes; while Cassebeer says he removed them in the spring or summer of 1878. A very vital conflict when you consider that Meinhard testifies that the rubber

hose was not placed around the beer-supply pipes until after the coils were removed, and that they were placed there

" in the latter part of the summer of 1877."

Casebeer says, that while doing this work he examined

" this apparatus to see if it was all right and in good working order, and recollects " seeing in this apparatus three one-inch tin pipes about eighteen inches long, sol- " dered into the bottom of the upper ice-box, and projecting four or five inches " above the bottom" (which would leave them projecting below the bottom about " twelve inches;) " and through each tin pipe one of the supply pipes passed. In " fact, while making these repairs, I pulled the supply-pipes through these tin " pipes to connect them. There was at this time a rubber hose tightly pulled over " the lower end of these tin pipes, and covered the supply pipes for some feet. I do " not now recollect if that rubber hose ran into the lower ice-box."

Certainly a most remarkable recollection for a man who, in 1877, casually examined this apparatus, on one occasion only.

Schaub, a plumber (affidavit, printed, p. 359, Deft's. Rec.), stated, that

" In the fall of 1878 I repaired the beer-cooling apparatus used by Gilbert & Mein- " hard in their saloon at Falls, Field North St. Paul St., this city. The " repairs I did consisted in soldering and repairing two lead pipes, through which " the beer was drawn for consumption from the keg in the cellar to the bar in the " saloon. While making said repairs, I examined the construction of this ap- " paratus."

In describing the construction of the apparatus, according to his recollection, he said, that "three one inch tin pipes about a " foot in length " were soldered in the bottom of the ice-box, extending "about four inches above and eight below its bottom." Whereas, Cassebeer stated that these tin pipes were "about 18 " inches long."

In speaking of the beer supply-pipes, he said :

" These lead pipes were each inclosed in a rubber pipe fastened to the lower end of " said tin pipes, and extended down and into the lower ice-box about eight inches."

A statement which becomes most important in view of the statements made by Cassebeer when examined as a witness in these causes and a comparison of which will show, that either he had no knowledge of the construction and operation of the apparatus or that he is a deliberate and wilful perjurer. If the latter be the true view, the motive will be found in the fact that Schaub has been engaged for several years past in infringing the patent in controversy.

Barr, Jr., a plumber (affidavit, printed p. 346, Deft.'s Rec.), stated, that in the years 1877 and 1878 he worked for Mutschler, who originally built Meinhard's apparatus, and that

" in the summer or fall of 1877 I done some work for Gilbert & Meinhard on the " beer cooling apparatus which they were using in their saloon in Falls Field, N. St. " Paul street, in this city."

The work which he did was the repairing of the beer-supply pipes, and he says that the beer supply pipes

" entered the bottom of the upper ice-box through tin pipes about twelve inches
" long and and an inch in diameter, which tin pipes were tightly soldered into the
" bottom of the upper ice-box and projected three or four inches above and about
" eight inches below the bottom of the ice-box. There were three of those tin
" pipes in the bottom of the upper ice-box; there was a lead coil for each supply
" pipe through which the beer would pass on its way to the faucets, the only way
" for water to pass out of the upper ice-box was through these tin pipes."

He makes no statement to the effect that the beer-supply pipes were surrounded with rubber hose, and the fact is they were not, for Barr states, that when he made the repairs and examined the apparatus, there was a coil for each beer-supply pipe in the bottom of the upper ice-box, and Meinhard testifies, that the rubber hose were not placed around the beer-supply pipes until after the coils were taken out. It was undoubtedly intended, however, that it should be understood, that there was a passage for the water from the upper to the lower ice-box, and that was the object of his statement, that

" the only way for the water to pass out of the upper ice-box was through these tin
" pipes."

If the water did so pass, it certainly did not go into the lower ice-box, for there was no way, according to Meinhard's own statement, for its getting there, and there was no way of catching it underneath, since the beer-supply-pipes passing directly down from the lower ice box through the floor, made it impossible to put a pail or tub underneath to catch the water.

Gilbert, Meinhard's partner, stated, that he recollected the beer cooling apparatus used at this time, and that he recollected Mr. Meinhard making some alterations in it after it was put in; that there

" were three or four one inch tin pipes soldered into the bottom of the upper ice-
" box, which projected about five inches above the bottom,"

and that the water in the upper ice-box ran through these tin pipes. That

" Albert Stief was our assistant bar-tender."

That he recollected

" very well the lads George J. Englert, Otto Schanz, Henry J. Weiland, Raymond
" Stief and Henry Koehler: they all worked for us as waiter boys in our beer gar-
" den and concert hall on Sundays only and when we had picnics and festivals, and
" would occasionally come around on week days to clean up the saloon and concert
" hall; they were not our bar-tenders and had nothing to do with the bar where
" this apparatus was used, the saloon being in the front of the building, while the
" beer garden was in the rear, and no beer was drawn from this apparatus to be
" drank in the beer garden, *and the saloon bar was usually closed on Sundays,*
" *and I doubt very much if either of these young lads ever took the trouble to ex-*
" *amine this apparatus.*"

Including Otto Schanz as "a lad" and "a waiter boy," although he was at that time at least thirty-two years of age, and as admitted by Meinhard, one of the reglar bar-tenders having in charge the apparatus in controversy.

Gilbert, however, shows more cunning than Meinhard, for instead of saying that "*the saloon was always closed on* Sundays," he said, it was "usually closed on Sundays."

He clearly intended, however, to convey the impression that the saloon was closed on Sundays, so that the waiter boys employed in the garden on Sundays only could have known nothing of the appatus in the saloon proper.

Cunning as Gilbert showed himself to be, he makes the fatal statement, that

"When we first commenced using this apparatus we used to dip some some of the "water out of the upper ice-box instead of allowing it all to pass out through these "tin pipes; particularly so when the ice was dirty, but after using the apparatus a "while, we quit dipping out any water, but allowed it all to pass through these tin "pipes and into the lower ice-box."

There is no pretence that the apparatus, as FIRST used, was provided with any passage for taking the water from the upper to the lower icebox, and yet Gilbert's statement is, that there was such a passage from the very first, but they did not permit all the water to pass through it.

Such were the affidavits filed by the defendants in reply to the affidavits filed in support of the application to reopen the case. And what a showing!

Meinhard, who, it was to be expected, would stick to the lie he first told, but he cut his own throat in his anxiety to support himself and destroy others.

Albert Stief, a mere lad—to use the expression of the defendants' affidavits—who shows himself to be simply the willing tool of Meinhard and the drafter of his affidavit.

Gilbert, Meinhard's partner, who, knowing that he lied, dared not repeat his story and subject himself to cross-examination, and so was not called as a witness in these causes.

Cassebeer, a plumber, who casually examined Meinhard's apparatus on one occasion.

Schaub, who likewise casually examined the Meinhard apparatus on one occasion, and who shows himself to be prompted by his desire to defeat the patent in controversy; and

Barr, Jr., who also casually examined the apparatus on one occasion when he was repairing the beer supply pipes, and who, while endeavoring to convey the impression that there was a passage for conducting the water from the upper to the lower ice box, makes a statement which shows—according to Meinhard's own admission—that there was at that time no such passage.

Again I say, what a showing!

Not only does it leave in one's mind "a reasonable doubt" as to the existence of the apparatus as claimed by Meinhard, but a positive conviction that such an apparatus never did exist.

This brings me to a consideration of the testimony taken in these causes.

Bearing in mind the well-settled rule as stated in Coffin *v.* Ogden, 18 Wall., 120, that

"The burden of proof rests upon him" (the defendant) "and every reasonable "doubt should be resolved against him,"

your Honor will experience no difficulty in readily disposing of the defendants' alleged anticipating structure based upon the testimony of Meinhard, Albert Stief, Barr, Cassebeer and Schaub.

I start with the broad assumption that it is utterly impossible for anyone to say, from a reading of their testimony, that an anticipation is established beyond a "reasonable doubt."

So well settled is the rule of law by which the defendants' testimony is to be judged, that I consider it unnecessary to more than state it. Yet I may be pardoned for calling your Honor's attention to the language of his Honor Judge Wallace, in disposing of the noted case of the American Bell Telephone Co. *v.* People's Telephone Co., 22 Fed. Rep., p. 313, in which case it was attempted to establish an anticipation by the

"testimony of nearly two hundred witnesses tending to prove priority of invention "by Drawbaugh."

Judge Wallace said:

"The complainant starts with the benefit of the presumption of law that Bell, "the patentee, was the inventor of that for which the letters patent were granted "him. Whoever alleges the contrary must assume the burden of proof. Evidence "of doubtful probative force will not overthrow the presumption of novelty and "originality arising from the grant of patent for an invention. It has been fre- "quently held that the defence of want of novelty or originality must be made "out by proof so clear and satisfactory as to remove all reasonable doubt.

"Washburn *v.* Gould, 3 Story, 122;
"Smith *v.* Fay, 6 Fisher, 446;
"Hawes *v.* Antisdel, 3 Bann. & Ard.,10;
"Patterson *v.* Duff, 20 Fed. Rep., 641;
"Wood *v.* Cleveland Rolling Mill Co., 4 Fisher, 560;
"Parham *v.* American Button-hole Co., *Id.* 482;

"In U. S. Stamping Co. *v.* Jewett, 18 Blatch. 469, S. C., 7 Fed. Rep., 869, "Blatchford, J., said, the defendant had not fulfiled 'the necessary obligation of "'showing beyond any reasonable doubt' that Weber (the alleged prior inventor) "was prior to Heath (the patentee). In Coffin *v.* Ogden, 18 Wall. 120, Mr. Justice "Swayne, delivering the opinion of the Court, stated the rule applicable to the "defendant as follows: 'The burden of proof rests upon him, and every reason- "'able doubt should be resolved against him.'"

Judged by that rule, which is the true rule, and was approved by the Supreme Court in the case of the People's Telephone Co. *v.* American Bell Telephone Co. 126 U. S., the attempted defense of anticipation by Meinhard fails; and this without reference to the complainant's testimony in rebuttal, which establishes beyond question the non-existence of the Meinhard apparatus with rubber hose arcund the beer-suply-pipes forming a water and air passage from the upper to the lower ice-box.

As to the insufficiency of the defendant's testimony to establish beyond a reasonable doubt the prior existence of the Meinhard apparatus provided with air and water passage, surrounding the beer-supply pipes from the upper to the lower ice-box.

Meinhard testifies (Defts. Rec., p. 46), that he had in his saloon at "Falls Field" a beer cooling apparatus, put in for him by a Mr. Neuhart in the summer of 1877, and as constructed by Neuhart, it consisted of p. 303.

" a small ice-box in the bar-room behind the bar, with three faucets, each of them " connected with a lead pipe reaching down to the larger ice-box in the cellar. " There they were connected by india rubber hose to faucets to tap the kegs; they " were running through the bottom of the small ice-box in the bar-room by small " tin pipes about an inch wide and about seven inches long."

There was no air or water passage from the upper to the lower ice box, nor was there any arrangement whatsoever for cooling the beer in the beer-supply pipes in passing from the kegs in the cellar to the faucets from which the beer was drawn in the saloon.

It is claimed, however, that Meinhard **afterwards** made water and air passages from the upper to the lower ice-box by surrounding the beer-supply-pipes with rubber hose, of such a diameter as to permit the water and cold air to pass from the upper to the lower ice-box, and in their passage, to surround and come in contact with the beer supply pipes, cooling the beer contained therein.

Meinhard was asked: p. 303.

" 18 Q. Did you make any changes in this apparatus after Mr. Neuhardt put it " in?

" Yes, sir, I did.

" 19 Q. Please state what they were?

" A. At first we put in some kind of coils on the bottom of the upper ice-box, " so as to put ice on and keep the beer cooler. But **afterwards** we took " those out, because they could not be well cleaned. **Then we put on " this rubber hose; that wasn't on before that.**

" That is about all the alterations made on it, as I recollect."

Bear in mind that he says

" At **first** we put in some kind of coils on the bottom of the upper ice-box,"

and that

" **Afterwards** we took those out;"

and

" **Then**" (that is, after the coil were taken out) "we put on this rubber hose; " that wasn't on before that;"

that is, the rubber hose surrounding the beer-supply pipes forming water and air passages from the upper to the lower ice-box.

Determine when the coils were taken out, and we have a date confessedly anterior to the time when Meinhard claims to have

put the rubber hose around the beer-supply pipes, and which he testifies was in the

"latter part of the summer of 1877."

He testifies, that these coils were used

"only a short while; I am not sure if we had then a couple of weeks or a "couple of months;"

and that

"I think Mr. Casebeer took them out."

(~~Defts.~~ Rec. p. ~~46, Questions 20 and 22.~~)

In his deposition in the Walker case, he said that the coils were *not used at first*, but were put in afterwards and then removed, when straight pipes were again used. (~~Old Rec., p. 9, 63 x Q.~~). As to when the coils were put in, and how long used, he testified (~~Old~~ Rec., ~~p. 9~~):

"64 x Q. When was it that Mr. Neuhart had put in these coils?
"A. This was done in the summer of 1877.
"65 x Q. How long after the first apparatus was put in were the coils put in?
"A. I can't say this—it may have been a few weeks afterwards—may be a "couple of months afterwards; I don't recollect now."

But Casebeer, who Meinhard says removed the coils, stated in his affidavit in the Welker case, that he did not remove them until "in the spring or summer of 1878" and Meinhard admits that it was not until after the removal of these coils that he put on the rubber hose.

Here, then, at the very outstart, we have a vital conflict between Meinhard and Cassebeer; and one which, if Cassebeer is to be believed as to the time when he removed the coils, changes, according to Meinhard's own admission, the date when he placed the rubber hose around the beer supply-pipes, after the summer of 1878, instead of the "*latter part of the summer of* 1877." as repeatedly sworn to by Meinhard, both in these causes and in the original causes.

In describing the apparatus, Meinhard says: The tin pipes in the upper ice-box were, "about seven inches long," and "were soldered into the bottom of the upper ice-box," extending above the bottom "about five or six inches," and below the bottom "about two inches;" and "that the rubber hose which he put around the beer supply pipes were just drawn over the tin pipes," which projected below the bottom of the upper ice-box; that the rubber hose was "very near the size of the tin pipes, so that we had some trouble in drawing them over," and extended down into the lower ice-box "a few inches;" in his original deposition he stated, "far enough to run the water into it."

But as to these tin pipes Albert Stief stated in his affidavit, that they "ran about four inches above and eight inches below it,"—the bottom of the upper ice-box, and that the rubber hose surrounding the beer

supply-pipes were "an inch or an inch and a quarter rubber hose," and extended down into the lower ice-box "about eight inches."

Cassebeer stated in his affidavit, that the "three one-inch tin pipes" soldered into the bottom of the upper ice-box were "about 18 inches long," and projected "four or five inches above the bottom," which would leave them projecting at least twelve inches below.

Schaub stated in his affidavit, referring to these tin pipes in the bottom of the upper ice-box, that they were "three-inch tin plates about a foot in length," and "extended about four inches below the bottom," and that the rubber hose surrounding the beer supply-pipes extended "into the lower ice-box about eight inches." And Barr, in his affidavit, stated, that these tin pipes were "about twelve inches long and an inch in diameter", and "projected three or four inches above and about eight inches below the bottom of the upper ice-box.

So we have the size of these tin pipes varying in length from seven to eighteen inches, and extending above the bottom of the upper ice-box from four to six inches, and below the bottom from two to twelve inches, and the rubber hose extending into the lower ice box from "just far enough to run the water into it," to eight inches, and no one of the affidavits corroborating Meinhard.

Meinhard testifies, that when he gave his testimony in the first cases, the apparatus was then in his saloon and could have been seen. An attempt is made to explain the reason for not tendering the complainant an inspection of that machine, by having Meinhard testify that (~~A. Q. 52~~): p. 306

"It could be seen, but as much as I know, nobody asked for it.
"53 Q. Would you have shown it to them had they called?
"A. I would."

Rather a lame excuse, when you consider that by tendering an inspection of the apparatus, most of the doubt surrounding its existence would have been disposed of.

When asked— p. 307

"17 Q. Who were your bar-tenders while you used this apparatus at Falls "Field?"

He said—

"A. Felix Gunther, Albert Stief and Otto Schanz."

In the other cases, he said, in reply to a similar question, that they were Felix Gunther, Otto Schanz and Fred Guthacker; here substituting Albert Stief for Fred Guthacker; the first mention of Stief as one of his bar-tenders being in his affidavit given in opposition to the application to re-open the original cases,

He admits that Schanz was his bar tender for "about a year," which he thinks was "a part of 1880 and 1881," when if Meinhard is to be believed, this apparatus with the rubber hose around the beer supply-pipes was in his saloon and in use.

He says that Gunther returned to Germany, and that he is not sure where he is.

Having disposed of Gunther and substituted Albert Stief for Guthacker, he endeavors to rid himself of Koehler, Hahn, the two Englerts, Weiland and Raymond Stief, by saying, that while they worked for him, they were employed in the concert hall or beer-garden, and that none of them worked steadily for him except Albert Stief; no doubt hoping in this way to reduce the number who were in a position to know as to the construction and operation of his beer apparatus to Gunther, Albert Stief and Otto Schanz.

Other than as I have pointed out, it may be said that Meinhard's direct testimony in these cases corresponds in general with his testimony in the former cases.

More than two weeks after the close of his direct examination, and after three questions had been asked him on cross-examination, defendants' counsel took the liberty of, as he termed it, recalling Meinhard for further examination; and in this connection it should be noted that Albert Stief was examined before Meinhard, and Barr and Cassebeer, after his direct examination and before his cross-examination.

A reading of Meinhard's further examination shows that it was prompted by matters brought out during the examination of those witnesses, and to explain away, if possible, the failure to examine Gilbert—Meinhard's partner—as a witness in these causes. He says that Gilbert was

> " in the saloon generally, but he didn't attend to the bar very often. * * *
> " His part generally was to entertain guests; he was talking and laughing with
> " them."

But these things did not prevent his having a knowledge of the apparatus and giving an affidavit as to its construction and operation in corroboration of Meinhard, or of at least assuming such knowledge to enable him to give an affidavit confirming Meinhard's statements as to the construction and operation of the apparatus.

Who, better than Gilbert, should have known of the construction and working of the apparatus, when he was daily around the saloon, and lived on the premises? Yet they did not examine him; and for the very obvious reason, that they dare not subject him to cross-examination, having observed the result of the cross-examination of their other witnesses.

Realizing that something more was necessary, Meinhard was asked,

> " 74 Q. Did he" (Gilbert) "have anything to do about making any changes or
> " repairs on this apparatus?
> " A. He did not.
> " 75 Q. Who attended to that?
> " A. I always attended to that."

But Meinhard does not say that Gilbert did not know of any changes or repairs made in the apparatus; but no doubt he would have said so had it not been that Gilbert had said in his affidavit that he

"did recollect Mr. Meinhard's making some alterations in it after it was put in."

It is impossible for the defendants to explain away their failure to examine Gilbert.

His willingness to aid them is established by the affidavit which he gave in the original cases. He was, so to speak, one of them, and his attendance could have been secured as readily as Meinhard's. Yet they did not call him.

The only explanation for their failure to do so is that Gilbert knew that no such apparatus as testified to by Meinhard, and as referred to in his (Gilbert's) affidavit ever evisted in their saloon. When asked on cross-examination: p. 337.

"132 x Q. Did Mr. Gilbert know of your putting this rubber hose around the "beer-supply pipes?

He replied:

"A. I could not say that he knows about it. He is a very stout and fat man and "he never could attend to any such business. He perhaps could lift out a glass of "beer and attend to customers, but to do any such thing, it was impossible for "him, and I suppose he scarcely ever entered the cellar."

Too fat to know of an addition which, if made, changed the entire working of the apparatus, although he was constantly on the premises and in the habit of tending bar, in doing which he used the apparatus. But he was not too fat to refrain from attempting to endorse Meinhard's false statements.

Meinhard however, was finally compelled to admit that Gilbert did know something of the apparatus: p. 367.

"970 x Q. Have you named every one who, to your knowledge, knew of your "beer-drawing apparatus with the rubber hose over the beer-supply pipes?
"A. I could not say how many knew about it, because I didn't know who "looked at it and who didn't.
"971 x Q. Have you named every one that you know of as having knowledge "of that?
"A. I think I have.
"972 x Q. Gilbert didn't know of it, did he?
"A. He knew some of it."

Without further comment, I leave it to your Honor to infer why Gilbert was not called as a witness. Certainly their failure to call him does not create an inference tending in any way to corroborate the probable existence of the Meinhard apparatus.

A further attempt was made to have Meinhard strengthen Albert Stief, by asking him: p. 308.

"80 Q. Which of your bartenders had to do with the apparatus?
"A. For the longest time I guess young Albert Stief had to do with it."

One whom he did not even mention when called upon in his original deposition to give the names of his bartenders. Undoubtedly the prominence there attempted to be given to Stief was prompted by the fact that he alone, of all Meinhard's bartenders and other employees, was the only one who could or would, testify to the existence of the apparatus as claimed by Meinhard. He admits, however, in the following answer, that Felix Gunther and Otto Schanz had to do with his apparatus.

p. 308.

"81 Q. And who else?
"A. Felix Gunther and Otto Schanz."

Cassebeer having been examined prior to this re-examination, Meinhard was called upon to, and did, produce a book containing the entry of a payment to Cassebeer on the 29th of October, 1878, the object of which will be apparent when we come to a consideration of Cassebeer's testimony. But the bill itself was not produced, Meinhard testifying that he could not find it.

p. 309

"95 Q. Have you looked for them—the bill—recently?
"A. Not before last night. I tried to find it for Mr. Cassebeer to find the "dates."

Later on, however, and after the itemized account was discovered in Cassebeer's books, Meinhard quickly found and produced the bill. The reason for his failure to find it originally will also be apparent when we come to a consideration of Cassebeer's testimony; although it may be here properly remarked that neither the itemized account found in Cassebeer's book, nor the the bill produced by Meinhard contain any item corroborating the testimony given by Cassebeer and Meinhard; and had not the itemized account in the book been found, it may safely be assumed that the bill would never have been found and produced by Meinhard. No explanation was offered by Meinhard to account for the sudden finding of this lost bill.

But it required cross-examination to fully develop Meinhard and show him up in his true character of the liar he proves himself to be.

Harsh language, I admit, and only justifiable where, as in this case, there is no other language to properly characterize the subject—I purposely refrain from speaking of him as a man. In this I am justified, since he shows himself to be of an utterly depraved character in admitting that, according to his ideas, no man is bound to tell the truth, even under oath, where his business interests are at stake:

p. 352

"1181 x Q. What do you think your fellow-citizens and bar-keepers will say of "you when they understand you have come upon the stand and said under oath "that you would not believe them under oath when their business is at stake?"
"A. They know, as all of us, that as soon as their business interests are at stake, "they are not bound by law to say the truth.

It is unnecessary to, at this time, further probe Meinhard's

character preparatory to a consideration of his cross-examination, since he was produced in court, during the argument of defendants' counsel, as an exhibit, to counteract, if possible, the fatal character of his testimony.

What an impression that face must have made upon your Honor. If you can recall the picture, I am entirely satisfied.

Most certainly his appearance fully corroborates his testimony. As well ask your Honor to believe the statements of a self-confessed perjurer as to ask you to believe the statement of Meinhard; and of this I shall satisfy your Honor as I proceed with a consideration of his cross-examination.

It will tend to clearness to return to the apparatus as put in by Neuhart.

On cross-examination, Meinhard admits that he neither devised the apparatus as put in by Neuhart, nor knew what it was going to be until completed; that as completed, it neither required nor contemplated additions or improvements, it being a finished structure in all respects, and as such was used for some time "perhaps a month, or two or three" (137 x Q., ~~p. 58~~).

He says that the adding of the rubber hose around the beer-supply pipes, forming water and air passages from the upper to the lower ice box, was suggested to him by the water running upon the saloon floor in the apparatus as left by Neuhart. As if it were within the bounds of possibility that the constructor of such an apparatus should have left it without provision being made for taking care of the water resulting from the melting of the ice in the upper ice box, and that for two or three months the water was left to run onto the saloon floor. Yet, he says, speaking of the rubber hose (x Q. 134, p. ~~59~~):

"We put them on to keep the water from the floor; from the tin pipes the water "went on the floor,"

Not a suggestion of any provision for taking care of the water in the upper ice-box, nor that the water went other than onto the floor. To make certain of that, however, I asked him (Defts. Record, p. ~~59~~):

"135 x Q. Before you had rubber hose, then the water went out of the tin pipes "onto the floor?
"A. Yes, sir."

Regarding such a thing as utterly absurd, it occurred to me to suggest to him the use of buckets under the tin pipes for catching the water, in the firm belief that he would avail himself of the suggestion as a way out of his difficulty in having stated that the water went onto the floor,—which no one would believe—and that in availing himself of the bucket theory he would probably overlook the fact that he had already stated that the beer-supply pipes ran *straight down* from the bottom of the upper ice-box to and through the saloon floor, making it im-

possible to place pails or anything else under the tin pipes in which to catch the water, and as clearly shown in his drawing "Defendant's Exhibit Meinhard A."

Accordingly I asked him (and, immediately following his statement that the water passed through the tin pipes onto the floor):

"136 x Q. And didn't you have buckets under the tin pipes to catch the water?
"A. Yes, sir, but those tenders generally didn't attend to it, and the floor was wet all the time, and that was the reason I put on the hose."

Availing himself of the suggestion precisely as I anticipated he would, notwithstanding the fact that he had previously sworn that the water went on to the floor, and made no mention whatever of the use of buckets, the suggestion contained in my question being the first reference to their use.

Realizing his dilemma in availing himself of the suggestion as to the use of buckets, I thought best to again refer to their use, so asked him:

"213 x Q. This rubber hose was no part of the original apparatus, was it?
"A. No, sir, it was not.
"214 x Q. And as you first used the apparatus, the water ran out through the "drip-pipes into the buckets in the closet underneath the ice-box?
"Yes, sir, it did."

* * * * * * * * *

"318 x Q. And then you put the pails in the closet under these drip pipes, did "you?
"A. Yes, sir; so it was done at first."

He, however, entirely overlooked the utter impossibility of placing pails under the tin pipes in the bottom of the upper ice-box to catch the water.

It was a physical impossibility, since, as stated by Meinhard, the beer supply-pipes passed through these tin pipes, straight down through the saloon floor. (~~Defts~~.'s Rec., p. ~~75.~~)

"332 x Q. You didn't change the direction of the beer supply-pipes in order to "put this rubber hose around?"
"A. No, sir; I did not.
"333 x Q. As the apparatus was first put in, did the beer-supply pipes go right "down to the floor?
"A. In the cellar, do you mean?
"334 x Q. The floor on which the upper ice-box stood.
"A. Yes, sir; they went right to the floor.

* * * * * * * * *

"339 x Q. The beer-supply pipes came through the floor of the upper ice-box?
"A. Yes, sir.
"340 x Q. Down to the floor of the saloon?
"A. Yes, sir."

And such is the arrangement shown in the drawing (Defendants' Exhibit Meinhard A,") which Meinhard made of his apparatus.

Then was it possible to put pails under the tin pipes in the bottom of the upper ice-box; By examining Meinhard's drawing of

his apparatus, your Honor will see how impossible it was. It could not be done.

How then will you reconcile this conflict;

Is it not sufficient to absolutely destroy all confidence in Meinhard's testimony? It seems to me it is. It cannot be explained away, since Meinhard repeatedly swore that pails were placed under these tin pipes in order to catch the water from the upper ice-box, and we have a physical demonstration of the utter impossibility of such a thing if the apparatus was constructed as Meinhard testifies and as pictured in his drawing.

A careful reading of all that part of Meinhard's testimony having reference to the apparatus as originally constructed by Neuhart, which I will quote, will, I think, satisfy your Honor that Meinhard testified falsely when he said that in the apparatus as originally constructed the water went onto the floor, and still more falsely—if such a thing be possible—when he endeavored to correct that absurdity by availing himself of the suggestion that pails were placed under the tin pipes in the bottom of the lower ice-box to catch the water.

The fact is, as testified to by the complainant's witnesses, that the beer supply-pipes were tighly soldered into the bottom of the upper ice-box, and the only way of getting the water out was to dip it out from the top as was intended; so that there was no need of either pails or buckets or rubber hose for catching or carrying off the water.

Albert Stief, Meinhard's "faithful" bartender, who testifies that he was with Meinhard when the apparatus was put in (165 x Q.); that he saw the apparatus when completed (171 x Q); that no change was ever made in the apparatus (173 x Q.); that the rubber hose around the beer supply-pipes was a part of the apparatus as originally put in (x Q. 193), and that from the very first use of the apparatus, the water from the upper ice-box passed through the rubber hose down into the lower ice-box (x Q. 200)—all of which is flatly contradicted by Meinhard—contradicts Meinhard's statements as to the use of pails in the cupboard under the upper ice-box to catch the water coming throug the tin pipes, for he says that nothing was kept in the cupboard.

"206 x Q. What was underneath the ice-box? (the upper ice-box).
"A. Oh, a sort of a cupboard.
* * * * * * * *
"225 x Q. What did you keep in the cupboard under the upper ice-box?
"A. Nothing."

Certainly if pails were kept there, and for the very important purpose of catching the water coming from the upper ice box, Stief would have known of it, if he knew anything of the apparatus, and he would not have said that nothing was kept in that cupboard.

Far more reasonable would appear Stief's statement that the

rubber hose were a part of the original construction and that the water always passed through them from the upper to the lower ice-box, than Meinhard's statements, first, that the water from the upper ice-box went onto the saloon floor, and second, that pails were placed in the closet underneath the upper ice-box to catch the water coming through the tin pipes in the bottom of the box.

But *convincing* are the statements of the complainant's witnesses that the beer-supply-pipes were tightly soldered into the bottom of the upper ice-box, and that the water was dipped out from the top, since they are consistent with what clearly must have been the construction of the original apparatus. I say this, because no constructor, much less one of Neuhart's experience, would have constructed an apparatus with tin pipes in the bottom of the upper ice-box to let the water out, and yet with no means provided for taking care of that water; while he would have constructed one with the beer-supply-pipes tightly soldered into the bottom of the upper ice-box—the water to be dipped out from the top—as it would have been a complete and practical apparatus and one to be used without addition or improvement.

I quote for the convenience of the Court that part of Meinhard's cross-examination having special reference to his apparatus as originally constructed by Neuhart:

"135 x Q. Before you had rubber hose then the water went out of the tin pipes "onto the floor?

"A. Yes, sir.

"136 x Q. And didn't you have buckets under the tin pipes to catch the "water?

"A. Yes, sir; but these tenders generally didn't attend to it and the floor was "wet all the time, and that was the reason I put on the hose.

* * * * * * * *

"213 x Q. This rubber hose was no part of the original apparatus, was it?

"A. No, sir, it was not.

"214 x Q. As you first used the apparatus, the water ran out through the drip "pipes into the buckets, in the closet underneath the ice-box?

"A. Yes, sir; it did.

"215 x Q. How long did you continue to use the apparatus in that way?

"A. I can't say.

"216 x Q Did you continue to use it in that way two or three years?

"A. I did not.

"217 x Q. Didn't you continue to use it in that way three or four months?

"A. A couple of months I suppose it was.

* * * * * * * *

"301 x Q. Do you agree with me in stating that the apparatus, as put in by "Mutschler, didn't have the rubber hose around the beer-supply pipes?

"A. It did not.

"302 x Q. And, as Mr. Mutschler left the apparatus, so you put it i to use at "first, didn't you?

"A. Mutschler and Neuhart. One furnished one part and one the other; and "so it was used first.

"303 x Q. Then it wasn't originally intended to have pipe of any kind sur-"rounding the beer-supply pipes?

"A. I guess it was not."

Curious, isn't it, that Meinhard found everything adapted to the surrounding of the beer-supply pipes with rubber hose and

fastening them to the bottom of the upper ice-box without change, especially when, as he says, "such was not the original intention."

"309 x Q. And how did those beer-supply-pipes enter the upper ice-box?
"A. They entered into the bottom, just as shown here;" (having reference to his "drawing.)
"310 x Q. Don't refer to anything that is shown here, but tell me from your "recollection how the beer-supply-pipes entered the ice-box?
"A. They entered it by tin pipes.
"311 x Q. What were these tin pipes?
"A. I think they were about an inch wide and a couple of inches below the lower "bottom of the ice-box, and about five inches above it.
"312 x Q. And how many of these tin pipes were there?
"A. Three.
* * * * * * * *
318 x Q. And then you put the pails in the closet under these drip pipes, did you?
"A. Yes, sir; so it was done at first.
* * * * * * * *
"332 x Q. You didn't change the direction of the beer-supply-pipes in order to "put these rubber pipes around?
"A. No, sir, I did not.
"333 x Q. As the apparatus was first put in, did the beer-supply-pipes go right "down to the floor?
"A. In the floor, do you mean?
"334 x Q. The floor on which the upper ice-box stood.
"A. Yes, sir; they went right to the floor.
* * * * * * * *
"339 x Q. The beer-supply-pipes came through the floor of the upper ice-box?
"A. Yes, sir.
"340 x Q. Down to the floor of the saloon?
"A. Yes, sir.
* * * * * * * *
"1121 x Q. You didn't devise this beer apparatus that Neuhart put in, did you?
"A. I did not, and didn't know anything about it before he put it in.
"1122 x Q. And you didn't know what it was going to be until he got it com-"pleted, did you?
"A. I did not.
"1123 x Q. Did you ever make a single improvement or change of any kind to "that beer apparatus other than as you claim, put the rubber hose around the "beer-supply-pipes?
"A. I did not."

In the apparatus as constructed by Neuhart, straight pipes, provided with brass couplings at each end were used to connect the beer-supply pipes with the faucets in the upper ice-box. It is claimed that afterwards, but exactly how long does not appear, coils provided with brass couplings at each end were substituted for the straight pipes.

Meinhard says (Deft.'s Rec., p. 64):

"198 x Q. When first put in, it didn't have the coils?
"A. No, sir.
"199 x Q. How long did you use it before the coils were put in?
"A. I can't say; it may be one month, or two or three months.
* * * * * * * *
"203 x Q. Who put in the coils for you?
"A. I am not sure about this. I seen them at Neuhart's place, on West Main "street—or East Main street I guess it is—and I don't recollect if I wanted him to "have it done as he had the first work done, or if I ordered it by Mr. Barr; I ain't "sure about this.
"204 x Q. You don't know then who put in the coils?

" A. I don't know.

* * * * * * *

" 467 x Q. Wasn't the first alteration the putting in of the coils?
" A. I guess the first was putting in of the coils."

He could not, or would not, say who put in the coils, although, when examined in the Welker case, he said (~~Old Rec., p. 9, 63 x Q.~~):

" Mr. Neuhard had put in coils in connection with the beer-pipe,' and " this was " done in the summer of 1877."

On his direct examination he was asked:

" 22 Q. How long did you use those coils in the upper ice-box?"
" A. Only a short while; I am not sure whether we had them a couple of weeks " or a couple of months."

and that they were removed (Question 19),

" *because they could not be well cleaned.*"

On his cross-examination, however, he said that these coils were put in at the suggestion of Mr. Bartholomay, because he was not satisfied with the beer, and were taken out because of *"the beer tasting " bad."*

" 178 x Q. How do you know that these coils were not removed by him after " 1878, and included in his next bill?"
" A I was of the opinion that it was taken out *because all the complaints we " had was on account of these coils, the beer tasting bad,* and therefore my opinion " was they were taken out in 1877 already, but if they were not taken out in 1877, " as appears by Cassebeer's bills, I am sure they were taken out in 1878."

* * * * * * * * *

" 187 x Q. How do you know these coils were not taken out in 1879?"
" A. I know by knowing the complaints about it; of course the only complaint " about it was the bad taste of the beer.
" 188 x Q. There were complaints about the beer then when you had the coils?
" A. Yes, sir.

* * * * * * * *

" 194 x Q. When it was first put in, did it have these coils?
" A. It did not.
" 195 x Q. How was it when it was first put in?
" A. The pipes were running right down as shown here, and by the advice of " somebody, I guess Mr. Bartholomay, we put in the coils to keep the beer cooler."

And in answering Cross-Question 468, he said, in speaking of the coils:

" My first impression was we had taken out those coils in a very short time be- " cause they complained of the beer tasting poorly."

And immediately following, he said, that he put the coils in at Mr. Bartholomay's suggestion, and because he (Bartholomay)—whose beer Meinhard was selling—was not satisfied with the condition of the beer.

" 469 x Q. You stated that it was at Mr. Bartholomay's advice that you put the " coils in; is that your recollection?
" A. That is my recollection, yes, sir.
" 470 x Q. Give Mr. Bartholomay's full name, will you?
" A. I guess Henry is his first name.
" 471 x Q. He is the brewer here, is he?

" Yes, sir.
" 472 x Q. He knew of this apparatus of yours, did he?
" Yes, sir."

* * * * * * * *

" 474 x Q. And it was owing to the fact that he was not satisfied with the beer
" that he advised you to put the coils in?
"A. Yes sir."

p. 333

* * * * * * * *

" 476 x Q. How did he come to advise you in regard to the coils?
" I suppose he wasn't satisfied with his beer. We sold his beer, and he tried to
" have it as good as possible."

When examined in the Welker case, he was asked:

p. 527.

" 78 x Q. Did the coils work better than the bent pipes?
" A. They kept the beer better—cool; but could not be so well cleaned, therefore
" we took them out again."

There you have a mass of contradictions, as to a collateral fact, fairly illustrating the character of Meinhard's testimony. In his original deposition in the Welker case, he said the coils were put in to improve the condition of his beer, and taken out because they "could not be so well cleaned."

On direct examination in these cases he said the coils were taken out "because they could not be so well cleaned." But on his cross examination he says, the coils were put in at the suggestion of Henry Bartholomay, because he was not satisfied with the condition of the beer, and that they were removed, not

" *because they could not be so well cleaned*," but "*because all the complaints we had*
" *was on account of these coils; the beer tasting bad* * * * *because they com-*
" *plained of the beer tasting poorly.*

Mr. Bartholomay, however, denies that the coils were put in at his suggestion, and says that he condemned their use (Bartholomay's testimony, ~~Comp. Rec., p. 469~~):

p. 264 - 267

" 15 Q. Did you ever request or advise Mr. Meinhard during the time he was
" proprietor of Falls Field to put ceils in his upper ice-box?
" A. I did not, sir.

* * * * * * * *

" 59 Q. And you didn't favor coils at that time?
" A. I didn't, sir.
" 60 Q. Did you tell Mr. Meinhard so?
" A. I think I told him so.
" 61 Q. Didn't Mr. Meinhard shortly after you told him about the coils, take
" those coils out of his ice-box?
" A. I told him in his place I would have it different and would have a straight
" pipe.
" 62 Q. And that you wouldn't use the coils?
" A. I wouldn't use the coils.
" 63 Q. And you told Mr. Meinhard so, did you?
" A. Yes, sir."

Again, the "faithful" bar-tender Albert Stief contradicts Meinhard, for he described the apparatus as having the beer supply

pipes extending through the upper ice box direct to faucets, and says that no change was ever made in the apparatus, and that he never heard a complaint about the beer, although he was there when the apparatus was constructed, knew of its use and describes its construction and operation. He says (Stief's deposition, Defts. Rec. Ques. 25): 283-291-292.

"The upper ice-box had three faucets; there were little lead pipes that ran from "the faucets through the tin pipes, about an inch in circumference.
"34 Q. Did this apparatus give satisfaction while in use?
"A. Yes, sir; I never heard a complaint about the beer drawn from it.
"35 Q. What did your customers say about the beer drawn from this apparatus?
"A. Well, sir, we always had a first-class trade Sunday mornings in the bar-"room. They always praised the beer which was drawn through this apparatus.

* * * * * * * *

"171 x Q. You saw that apparatus, didn't you, as soon as it was completed?
"A. Yes, sir.

* * * * * * * *

"173 x Q. Do you know of any change ever having been made in that apparatus?
"A. No, sir; I do not.

How does that, I submit, correspond with the statement of Meinhard as to the use of coils, the reasons for their use, and for their removal?

Is it not a direct contradiction?

It is impossible to believe, if the coils were there, and their use the cause of complaint as to the character of the beer, that Steif, if he had the knowlenge which it is claimed he had, would not have known it; and yet he had no knowledge of the coils, or of any complaint as to the character of the beer.

It may be said that this is an immaterial point and that the presence or absence of these coils, and the reason for their introduction, as well as for their removal, can have no bearing upon the question as to the presence or absence of the rubber hose around the beer-supply-pipes. But such is not the case, as will be developed in considering the extent of the use of the coils, and the time of their removal—Meinhard having stated that the rubber hose were not placed around the beer-supply-pipes until after the coils in question were removed.

On the direct examination Meinhard said (Q. 22) that the coils in the upper ice-box were used 304.

"only a short while; I am not sure if we used them a couple of weeks or a couple "of months;"

having previously stated that 303.

"at **first** we put in some kind of coils on the bottom of the upper ice-box, so as to "put ice on and keep the beer cooler, but **afterwards** we took these out because "they could not be well-cleaned; **then** we put on this rubber hose that wasn't on "before. That is about all the alterations made on it as I recollect."

Observe—as I have already pointed out—the order in which the improvements occurred. First, the use of the coils; then the removal of the coils, and after their removal, the addition of the rubber hose "**that wasn't on before.**"

In the Welker case, precisely as on his direct examination in these cases, he was asked how long the coils were used, and he made the same answer, *"only a short time"* (Old Rec., p. 11).

"79 x Q. How long did you use the coils?
"A. Don't know exactly how long—but only a short time."

And he also said that the coils were put in in the summer of 1877.

If any reliance is to be given to a statement made by Meinhard, it would seem clear that the coils were put in in the summer of 1877, were in use only a short time, and that the rubber hose around the beer-supply pipes were not added until after the removal of the coils, for such are Meinhard's deliberate statements both on his direct examination in these cases and in the Welker case. In fact, the only way in which he fixes the time of the addition of the rubber hose to the beer-supply pipes is by the removal of the coils which he says were put in in the summer of 1877, and were in use only a short while, and that it was after that that he added the rubber hose.

Mr. Cassebeer, he says, removed the coils.

Cassebeer was examined in the interval between Meinhard's direct and cross-examination, and although he swore on his direct examination that he removed these coils from the bottom of the upper ice box

"It must have been, I guess, 1876, or sometime round there, or 1877,"

he was forced to admit on his cross-examination, that he did NO work for Meinhard until May, 1878; and that the earliest date on which he could have removed the coils was September, 1878; and that if he did not remove them then, he could not have removed them until September, 1879—long after the date of Gordon's invention—as he did no work for Meinhard between September, 1878, and September, 1879.

So if Cassebeer took out the coils—which Meinhard says he did—they certainly were not taken out until September, 1878; and Meinhard, having stated that the rubber hose were not placed around the beer-supply pipes until after the removal of the coils, it would follow that they were not placed there until after September, 1878, which would be at least a year later than the time repeatedly sworn to by Meinhard. when he placed the rbber hose around the beer-supply pipes, which was the summer of 1877 (Old Rec., p. 8):

"46 Q. Then when was it that you fastened this rubber hose h to the pipe d?
"A. I think it was in the latter part of the summer of 1877."

The effect of Cassebeer's testimony is apparent throughout Meinhard's cross-examination, for realizing the dilemna in which it placed him, he endeavored to work himself out of it,—with most disastrous results.

Without the slightest hestitation, he, at the very first opportunity, contradicts the statements of his direct examination and says that he placed the rubber hose around the beer supply-pipes **before** the removal of the coils; and for no other reason than that Cassebeer had said that he could not have taken them out before September, 1878, and that the entry in his book showed that his first payment to Cassebeer was on the 29th of October, 1878.

Meinhard's cross-examination upon this point will prove both interesting and profitable reading, and I venture the prediction that it will thoroughly satisfy your Honor that he is not entitled to belief. Is it possible to believe any statement made by one who first says the coils were removed before the rubber hose were placed around the beer supply-pipes—which he says was in the summer of 1877—and who subsequently, when he discovers that the coils could not have been taken out until the fall of 1878, swears with equal assurance, that the rubber hose were placed around the beer supply-pipe *before* the coils were taken out? Yet that is the precise position in which Meinhard has placed himself.

On his cross examination he testified: p. 310.

"108 x Q. You have referred to Mr. Cassebeer; what work did he first do for "you?

"A. I couldn't say; there were so many different repairs that I couldn't say "now.

"109 x Q. Have you any idea what was the first work he did for you, and when "he did it?

"A. I guess he took out these coolers as his first job.

"110 x Q. Describe these coolers that he took out?

"A. They were little tin pipes and bent around about five or six times. I can't "explain how it is in English. I mean coiled around.

* * * * * * * *

"115 x Q. And who do you say removed these coils? p. 311.

"A. Mr. Cassebeer.

"116 x Q. And when were they removed, if you know?

"A. My first impression was that we had them removed in 1877 already, but by "looking at the book and seeing Mr. Cassebeer hadn't done any work there, and I "am sure that he took them out, so it seems they were taken out in 1878.

"117 x Q. You didn't have any rubber pipes or hose covering the beer-supply "pipes until after these coils were taken out, did you?

"A. We had the rubber hose put on, I guess, very soon after we had the appa-"ratus put in.

"118 x Q. Didn't you have the rubber hose put on after the coils were taken "out.

"A. I wasn't sure about this when I testified before. I thought all these alter-"ations were done about the same time, in the summer of 1877, but now I am sure "the rubber hose was put on in 1877, while the coils were taken out in 1878."

Here attempting to crawl out of his dilemma by adding another lie to the many already uttered, in saying, "I wasn't sure about this "when I testified before."

Do you find any expression of doubt or uncertainty when on his direct examination he said: "Then," (after the coils were removed), "we put on the rubber hose; that wasn't on before that. As positive a statement as could possibly be made. Not a suggestion of doubt or uncertainty.

Nothing could better illustrate the unreliable character of Meinhard's testimony than this very statement—"I wasn't sure about this "when I testified before."

p. 311.

"119 x Q. I didn't ask you about any repairs; I asked you the simple question "whether you had rubber hose around the beer-supply pipes before the coils were "taken out?

"A. Well, I really am not sure what we had to do there about ten years ago, "and I know what we have done, but about the time as you find here I wasn't "quite sure. I might have said that one thing was done before and one afterwards "without being sure about it. I don't recollect sure how it was."

Even there he admits that he "don't recollect sure how it was." How then, I ask, is it possible for your Honor to give any credence to what he may say as to this apparatus, and when, if ever, he placed the rubber hose round the beer-supply-pipes. How can your Honor say, assuming that at some time he did place rubber hose around beer supply-pipes, that it was in 1877, and not in 1879, 1880 or 1881. If *he* cannot recollect, certainly the Court cannot recollect for him.

It is evident that the only thought running through Meinhard's mind was to adhere to his story that he placed rubber hose around the beer-supply-pipes in 1877, and that he was determined to do, without reference to what he had or had not testified to. Hence such matters as the order in which it was done he regarded of no consequence.

p. 311.

"120 x Q. Then you come here to testify, do you, under oath, without being sure "of what you are saying?

"A. Well, I suppose nobody could know what he done ten years ago.

"121 x Q. Then, why do you come here and protend to testify as to what took "place ten years ago?

"A. Because there are some people that want to trouble us and make money out "of us and therefore I come here."

Here for the first time showing his motive and the animus; of which I shall have more to say hereafter.

p. 311.

"122 xQ. Who wants to make money out of you?

"A. It seems some people want to make money."

Let it be here noted that this witness was not subpoenaed, but came, as he says, at the request of defendants' counsel:

"135 x Q. Who told you to come here?

"A. Mr. Sullivan."

p. 311

And now we reach, so to speak, the climax:

p. 312

"128 x Q. Haven't you testified under oath that you had no rubber hose "around the beer-supply-pipes until after the coolers were taken out?

"A. I have not."

What does your Honor think of that?

To make it more striking, let me parallel his statements:

DIRECT EXAMINATION.

(p. 46.) 303

"19 Q. * * But afterwards we took "hose out" (the coils) "because they "could not be well cleaned. Then we "put on this rubber hose; *that wasn't* "*on before that.*"

CROSS-EXAMINATION.

(p. 59.) 312.

"128 x Q. Haven't you testified under "oath that you had no rubber hose "around the beer-supply-pipes until af- "ter the coolers"—coils—"were taken "out?"

"A. I have not."

There seems to be no limit to his audacity.

There denying in the most positive manner that he had testified that the rubber hose were not placed around the beer-supply-pipes until after the removal of the coils, when he *had* so testified on his direct examination.

After that, I submit, we may expect most anything from this witness.

So amazed was I at that denial (I was going to say "lie," for that, in plain English, is what it is), that I directed his attention to his former testimony. But even that had no effect upon him.

p. 312.

"129 x Q. Let me read you your testimony to show you how little your recol- "lection and word is worth?

"A. I know exactly what I said.

"130 x Q. If you know exactly what you said, tell us what you did say about "the rubber pipe?

"A. I said very many improvements or repairs were made to this apparatus, "and one after the other, and I guess I testified that the coils were taken out first "and the rubber put on afterwdrds, and the book shows that it is impossible and so "of course it is impossible, and I suppose no man is needed or wanted to know ten "years ago, to know what he has done if his place is fixed up, or privy, and that is "what Cassebeer done, and between that he has done another job and I guess it "isn't my business to come here and testify to all such things."

An answer which perfectly illustrates the witness.

But again he destroys himself by the statement:

"I said very many improvements or repairs were made to this apparatus."

having on his direct examination said that the only alterations made were the putting in of the coils, the removal of the coils, and the adding of the rubber hose:

"that is about all the alterations made on it as I recollect."

How does that correspond with the statement of

"very many improvements and repairs."

Pursuing the subject I asked him: p. 312.

"131 x Q. Then you did testify under oath that you had no rubber pipes around "the beer-supply-pipes until after the coils were taken out?

"A. I testified that one was done after the other, and now it appears, one thing "was done first and the other afterwards.

"132 x Q. From what does it appear?

" A. From this book it appears, and I didn't look at it before.
" 133 x Q. What appears from looking at the book ?
" A. It appears that the hose was on first and the coils taken out afterwards."

Clearly indicating, that it appeared from the book which he produced, that the rubber hose were placed around the beer-supply-pipes before the coils were removed ; whereas, in fact, the only thing that the book contained was an entry of a payment to Cassebeer of $11.00 on the 29th of October, 1878, the bill for which, you will remember, he said was lost. There is nothing in his book to show what that payment was for, much less that it indicates the time when the rubber hose were placed around the beer-supply-pipes with reference to the removal of the coils.

p. 312

" 134 x Q. Now refer to your book and show me where it appears that the " coils were taken out first and the rubber pipes put on afterwards ?
" A. The coils were taken out in 1878, and I thought the whole thing was done " in 1877, and so it appears the hose was on first and the coils put on afterwards. " We put them on to keep the water from the floor. From the tin pipes the water " went on the floor."

Observe the studied effort to avoid a direct answer to the question; and for the very good reason that he well-knew that his book showed nothing of the kind; not even the date when the coils were removed.

p. 313.

" 148 x Q. What is there about this book which you have produced that enables " you to fix in your mind that the rubber hose was there before the coils of pipe " were taken out ?
" A. It doesn't show anything about the rubber hose, but it shows the coils " were taken out later.
" 140 x Q. What is there to show ?
" A. I suppose Mr. Cassebeer took that out, and instead of 1877, as my opinion " was, he took them out in 1878."

Now he has reached the point of saying, that when he stated that the coils were taken out in 1877 and before the rubber hose were placed around the beer-supply-pipes, he didn't state it as a fact, but simply as a matter of opinion.

" 150 x Q. How do you know ?"

(that is, that Cassebeer took the coils out in 1878),

" A. By his bill."

Which bill he previously said was lost. Realizing his blunder when I asked him—

p. 313.

" 151 x Q. Where is his bill ?"

he answered—

" A. I don't know and can't explain.
" 152 x Q. Didn't you tell me you lost the bill ?
" A. Yes, sir ; lost of course, and I couldn't find it last night.
" 153 x Q. You said a moment ago that his bill showed that fact, that the coils " were taken out in 1878 ; when did you see that bill ?
" A. I didn't see it perhaps for years.

" 154 x Q. Then how do you know the bill shows that?
"A. Because I know it was one of his first jobs that he took out the coils. I got " acquainted with him about that time, and the first one, or one of the first jobs " was taking out these coils."

But this is contradicted both by Cassebeer and the itemized account contained in his book, which shows that the first work, which was on May 16, 1878, was gas-fitting work, and so Cassebeer admits. The next job was on September 6th and 7th, 1878, which—as the items show—was not the removal of the coils; and after that Cassebeer did nothing for Meinhard until the 24th of September, 1879.

So, if Cassebeer ever removed these coils, it was not until, or after, September, 1879. But, of course, Meinhard dare not admit that, for that would make it subsequent to the date of Gordon's invention; and, therefore, without rhyme or reason, he adhered to his latter statements, that the rubber hose were placed around the beer supply-pipes in the summer of 1877, and before the removal of the coils, and that the coils were not taken out until 1878.

p. 313.

" 155 x Q. How do you know the coils were taken out in 1878?
" A. My impression was it was in 1877, but now I am sure it was in 1878, be- " cause nobody else took them out."

It may well be that if they were ever there, Cassebeer took them out; but that does not prove that he took them out in 1878, since the accounts show that he worked for Meinhard in 1879 and every year thereafter.

p. 313.

" 156 x Q. Did Cassebeer tell you that he took them out in 1878?
" A. I was quite sure he done so."

But he was not so sure it was in 1878 when he said that the coils were taken out before the rubber hose were placed around the beer supply-pipes.

p. 314

" 159 x Q. Then how do you know he did take them out?
" A. Because he has done no work for me before 1878.

But, as already stated, he did work for him in 1879 and every year thereafter.

p. 314

" 169 x Q. What was the first job he did for you in 1878?
" A. I don't know if it was just this; but it was one of the first jobs he done " for me.
" 161 x Q. What was the first job he did for you?
" A. It may be he took out the coils, and it may be he fixed the water-closet.
" 162 x Q. What did he do first?
" A. I don't know.
" 163 x Q. What time in 1878 do you say he took these coils out?
" A. I can't fix any date, because his bills were running for a couple of months " generally. This bill of $11, as it appears on the book, may have been for three " months, or four months, or two months, and I am not sure."

* * * * * * * *

" 167 x Q. You found nothing in your book but the fact that you paid him $11 " on the 29th of October, 1878?
" A. Yes, sir.
" 168 x Q. There is nothing to show what that work was, is there?
" No, sir."

* * * * * * * *

" 170 x Q. Mr. Cassebeer worked for you after 1878, didn't he?
" A. Yes, sir."

* * * * * * * *

" 178 x Q. How do you know that these coils were not removed by him after " 1878, and included in his next bill?
" A. I was of the opinion that it was taken out before, because all the com- " plaints we had was on account of these coils, the beer tasting bad, and therefore, " my opinion was they were taken out in 1877, already : but if they were not taken " out in 1877, as appears by Cassebeer's bills, I am sure they were taken out in " 1878.
" 179 x Q. So you have seen Cassebeer's bill, have you?
" A. No, sir, I have not. I say it appears by having done this work in 1878."

This is the second time he has referred to Cassebeer's bills, and it would seem to indicate that he then had the bill. Subsequently he acknowledges that he found the bill, and produced it, without any explanation, however, as to where or how he found it.

" 180 x Q. Didn't you say it appeared by Cassebeer's bills?
" A. Oh, if I say it by this bill, that is shown here.
" 181 x Q. Why do you keep referring to Cassebeer's bills if you haven't them?
" A. I looked at the book and there it is shown the $11 was paid to him, and I " am sorry we don't have the bill here.
" 182 x Q. You have got all the other bills?
" A. Yes, sir ; we have got the next bill."

* * * * * * * *

" 187 x Q. How do you know these coils were not taken out in 1879?
" A. I know by knowing the complaints about it ; of course the only complaint " about it was the bad taste of the beer.
" 188 x Q. There were complaints about the beer then when you had the coils?
" A. Yes, sir."

Bear in mind, however, that he has stated that the coils were used only a short while, and were taken out owing to the beer tasting bad ; and now he says that he knows they were not taken out in 1879, owing to the complaints about the bad taste of the beer ; from which I infer he meant to say that they could not have been kept in as long as 1879 owing to that fact. Yet he would have us believe that they were kept in from the summer of 1877 until the fall of 1878, notwithstanding complaint as to the bad taste of the beer. On his direct examination, however, and in his examination in the Welker case, he stated that the coils were taken out because they could not be cleaned so well ; that is, so well as the straight pipes ; and not a word about the bad taste of the beer.

" 239 x Q. Then you say on this occasion that the rubber hose was placed " around the beer supply pipes in the summer of 1877?
" A. Yes, sir ; I say so.
" 240 x Q. Do you remember having testified on your direct examination that " the rubber pipes were not put on by you until after the coils were removed?

" A. I wasn't sure about the removing of the coils.
" 241 x Q. Did you state in your testimony, you were not sure about that " fact?
" A. Well, I don't know. I thought the coils were taken out first, because we " had some trouble with them; but now it appears they were left there longer, and " winters we didn't use it, and it may be we left it the winter and took it out the " next summer. It appears there was a mistake.
" 242 x Q. Thon you are mistaken in saying that the rubber pipes were not put " on until after the coils were removed, are you?
" A. It looks so.
" 243 x Q. Is it so, or not?
" A. Of course it is so."

Another illustration of the man, for he well knew, according to the statements made on his cross-examination, that it was so, and yet it had to be wrung from him.

" 244 x Q. Why is it so?
" A. Because I find now, by looking at the book, that the coils were taken out " later, as I thought. I thought they were taken out already in 1875 again, and so " they were left a longer time than I thought.
" 245 x Q. What did you find it, looking at the book?
" A. Found when Cassebeer's bill was paid.
" 246 x Q. You simply found you paid Cassebeer $11 on the 29th of October, " 1878?
" A. Yes, sir.
" 247 x Q. You don't know what that payment was for, do you?
" A. I know it was for different jobs, and included taking out the coils, because " if not the first, it was one of the first jobs, and he might have done some other re- " pairs the same day, or on, and I am quite sure taking them out was one of the " first jobs.
" 248 x Q. About what time in the year 1878 did Cassebeer first work for you?
" A. I couldn't say this.
" 249 x Q. Can you give the date in 1878 that he took the coils out, assuming he " took them out in 1878?
" A. I can not.
" 250 x Q. How long before the 29th of October, 1878, was it that he took the " coils out, if you know?
" A. I don't know.
" 251 x Q. Didn't you find by your books that you had paid Cassebeer on the " 17th of December, 1879, $13.50?
" A. Yes, sir.
" 252 x Q. What was that for?
" A. It was about half a dozen different jobs, mostly gas work.
* * * * * * * *
" 256 x Q. Was any of the bill for $11 for gas fittings?
" A. That is what I can't find out.
" 257 x Q. How is it that you remember that the bill for $13.50 was mostly for " gas fittings when you can't tell what the bill of $11 is for?
" A. Because we have got the other bill for $13.50.
" 258 x Q. You have that bill, have you?
" A. Yes, sir.
" 259 x Q. And you say that was mostly gas fittings?
" A. Yes, sir; but not for fixtures—gas work. It doesn't show exactly.
" 260 x Q. And have you seen that bill for $13.50?
" A. Yes, sir; seen it last night.
* * * * * * * *
" 263 x Q. How do you know that the removal of the coils was not included in " this bill of $13.50 that you paid in December, 1879?
" A. Because I am sure we didn't have the coils in as long as this.
" 264 x Q. That is only your recollection?

" A. Yes, sir ; that is my recollection. My first recollection was, it was taken " out in 1877 already.

" 265 x Q. Now, you say you are mistaken in the year, don't you ?

" A. Yes, sir ; I am mistaken in the year.

" 266 x Q. Since you are mistaken in the year, isn't it just as likely that it was " 1879 or 1880 as 1878 ?

" A. It is not, because I am sure we didn't use them a long time.

" 267 x Q. Did you use them a year ?

" A. I couldn't say how long.

" 268 x Q. Didn't you say on your former examination, you didn't use them " only two or three months at the most ?.

" A. It was my impression, and it may be so, because in winter we didn't use " them at all.

" 269 x Q. So it may be those coils were taken out in 1877 ; is that it ?

" A. It is not possible ; because in winter they haven't been used ; so it might " be they were used the latter part of 1877, and perhaps a short time in 1878, until " we found they didn't work well, and took them out. In winter we had nothing " to do.

* * * * * * * * p. 321.

" 275 x Q. Can you say that the work for the removal of these coils was included " in that bill ?

" A. I am sure it is.

" 276 x Q. What makes you sure ?

" A. Because I am sure Cassebeer took it out, and it was not very long after we " had put them in, because they worked so poorly."

Yet, according to his own admissions, the coils were in use for at least a year.

p. 321

" 277 x Q. When do you say you put them in ?

" A. I suppose the latter part or middle of the summer of 1877.

" 278 x Q. And when do you say you took them out ?

" A. It appears now by the book, that it was in 1878 instead of 1877, when, " my first impression was.

" 279 x Q. What time in 1878 does it appear that it was ?

" A. I can't say ; summer of 1878.

" 280 x Q. Will you swear it was the summer of 1878 ?

" A. All I have to testify, I guess, is under oath, I should think.

" 281 x Q. Will you swear it was in the summer of 1878 ?

" A. I am sure of the date—that it was done in 1878 instead of 1877, as I first " thought.

" 282 x Q. Was it in the summer of 1878 ?

" A. I im not sure of this. Mr. Cassebeer's bills sometimes run about three " months, and sometimes for about seven or eight months ; so if we had the bill " we could show exactly when that was done, but can't show that now.

" 283 x Q. Could you show from the bill exactly when it was done if the bill " didn't specify the removal of the coils ?

" A. Then I could not. Sometimes it don't exactly say what kind of work is " done.

The itemized bill, when found, (the circumstances in connection with its finding will be referred to when considering Cassebeer's testimony) did not specify the removal of the coils.

Here is the bill:

MESSRS. GILBERT & MEINHARDT.

Thurs., May 16th,	8 ⅜ fittings	8	.64
	3 Nipples		.24
	21 ft ⅜ pipe	5	1.05
	¾ day-time gas fitters fixing pipe		3.37
Sept. 6th	14¾ ft ½ inch pipe	5	.73
	Time plumber fixing pipe	25	1.25
	To 4 fittings	8	.32
Sept. 7th	One basin cock		1.40
	2 lbs. solder and hooks		.78
	Time plumber and helper fixing pipe		1.25
			$10.40
			.73
			$11.13

A study of which clearly negatives all possibility of the work in the removal of the coils being included in that bill.

Having this itemized account before me, I asked Meinhard, with the view of seeing if he could identify any of these items with the removal of the coils: p. 347.

"686 x Q. At the time the coils were taken out of the upper ice-box, did you "have any other change made?

"A. I don't recollect this.

"687 x Q. You don't recollect anything except that the coils were taken out; "is that it?

"A. Yes, sir.

"688 x Q. How long did it take Mr. Cassebeer to remove the coils?

"A. I don't know.

"689 x Q. Two or three days?

"A. I guess not; perhaps a couple of hours, I should think.

"690 x Q. He removed the coils, and what else did he do?

"A. I don't recollect what else he had to do at the same time, but I don't "think there was anything else done to the apparatus.

"691 x Q. Why was it you testified on a former occasion and on your direct "examination, that the rubber hose was not put on until after the coils were "taken out?

"A. It was my impression that we had all these changes made in the first "summer, and so my opinion was that this was done first, and had no idea that "some of it was done in the summer afterwards; and this was the mistake that I "made.

"692 x Q. How do you know that you didn't tell the truth when you said "that the rubber hose were not put on the beer supply pipes until after the coils "were taken out?

"A. By finding it in the book, that Cassebeer has done this afterwards; and I "recollect that I made a mistake about this."

As already remarked, the book showed nothing as to the removal of the coils—simply an entry of a payment to Cassebeer; but it did show that it was the first payment made to Cassebeer, and consequently that the first work which Cassebeer did for

Meinhard was about that time, and was not the removal of the coils. He had gone so far that he dared not deny that Cassebeer took the coils out, for both he and Cassebeer had repeatedly so sworn.

While the entry on his book and the itemized statement which I discovered in Cassebeer's book fixed a date before which the coils could not have been removed—if removed by Cassebeer, for he did not work for Meinhard before that time—it did not fix the date at which the coils were removed, or even a date before which the coils were removed, since Cassebeer worked for Meinhard in 1879 and every year thereafter, and from the character of the items in Cassebeer's account with Meinhard in the fall of 1879, there is far more reason for supposing that the work of the removing of the coils is included in that account than in the account of September, 1878, as your Honor will observe on examining the items of the two accounts. p. 34-8

" 693 x Q. Cassebeer did do work for you in 1879, didn't he?
" A. Yes, sir.
" 694 x Q. And in the fall of 1879, didn t he?
" A. I don't know this now, and we have to refer to the bills to find this.
" 695 x Q I will refer you to Mr. Cassebeer's account, and ask you to state if it does not show that Mr. Cassebeer worked for you, commencing September 24, 1879, until November the 21st, 1879, at different times?
" A. That is shown by my book just as well, and I never denied that it did. That is $13.50.
" 696 x Q. This bill amounts to $19.98; how do you account for that?
" A. Now you have got me I suppose. I have got some other property, and he " told me of a bill of nineteen dollars and so many cents, and I tried to find it out; " and I have got other property, and I had the bills made out separately, because " this had nothing to do with our business on Falls Field, and that is the Real " School property on Mortimer street, and if he had a larger bill it is partly done " in other places."

What could better illustrate the character of Meinhard than his expression: " Now you have got me I suppose?" p. 34-8

" 697 x Q. Then the $13.50 which he done for you in the fall of 1879 was work " which he did for you at Falls Field, was it?
" A. Yes, sir; I think it was.
" 698 x Q. How do you know the removal of the coils was not included in that " $13.50?
" A. Because I thought it was done a couple of months, or a short time, after " we put that in again; and if I had the impression it was done in 1877, I am sure it " was done in 1878, and not in 1879; and on the other side, I have the impression it " was the first job he had in my place.
" 699 x Q. Let me refer you to Cassebeer's account on page 20, and show you " how easily you are mistaken?
" A. If you will show it to me, I will believe it.
" 700 x Q. I ask you to explain this first item of an account headed "Gilbert & " Meinhard, page 20, Thursday, May 16th, 8 ¾ fittings 64 cents; 3 nipples, 24 cents; " 21 feet ¾ inch pipe. $1.05; ¾ day's time gas-fitter fixing pipe, $3.37."
" A. I can't explain anything of this at all. I don't know how he is making " out his bills, and don't know anything about it at all.
" 701 x Q. Don't you know after examining these items under date of May " 16th, that it has not any reference to removing the coils from the upper ice-box?
" A. I think it doesn't show nothing at all of the kind.
" 702 x Q. Did Mr. Cassebeer himself remove the coils, or did one of his men " remove them?

"A. I couldn't say this to-day. I think he has done it himself, and I don't "know if he has done it or sent another man to do it; and I am not sure. If I say "he has done it, it is understood that he had charge of it.

"703 x Q. Does this charge, to wit: "September 6th, 14¼ feet ¼ inch pipe, 73 "cents; time plumber fixing pipe, $1.25; to 4 fittings, 32 cents" have any refer- "ence to his removing those coils?

"A. I can't say; I suppose it is included in that where he says work so and so much, "and had to furnish stuff to it, and it was only a little work to take them out. I "scarcely think took more than an hour or two, and I suppose he put it in a bill for "work there. Of course, it don't say anything about coils.

"704 x Q. You have noticed it don't say anything about coils?

"A. Yes, sir.

"705 x Q. You think, then, it would come under the head of time, plumber "fitting pipe do you?

"A. So I should think.

"706 x Q. As I find these items in his bill of 1879, September 25th, 'To one "'hour's time plumbing, fitting pipe, 50 cents,' how do you know that is not the "item for removing the coils?

"A. I don't know what this is for.

"707 x Q. Then you don't get much support or comfort from Mr. Cassebeer's "account?

"A. I do not, and from no other business man, because they generally try to "charge as much as possible, and only sure of one thing, and that is, if they have "one hour's work they charge about five for it.

p. 34 * * * * * * * *

"713 x Q. The third item of the charges on page 20 is, September 7th, 'one basin "cock, $1.50; 2 pounds solder and hooks, 78 cents; time plumber and helper fixing "pipe, $1.25'; does that item refer to the removal of the coils from the upper ice "box?

"A, I don't know; it might have been a part of it and might not, and I don't "know.

"714 x Q. Then the fact that you find on the bills rendered by Mr. Cassebeer in "1878 and 1879, 'time for fixing pipe,' does not enable you to fix the time when the "coils were taken out, does it?

"A. No, sir, it does not."

p. 35 * * * * * * * *

"732 x Q. Without reference to whether you were mistaken or not, didn't you "testify on your direct examination that the coils were removed from the upper "ice box before you put the rubber hose around the beer supply pipes?

"A. I guess I testified so because it was my idea that the coils were taken out "shortly after we put them in.

"733 x Q. What, if anything, has changed your idea as to that?

"A. I am sure Mr. Cassebeer has taken the coils out, and as it is shown that he "did no work for me before 1878, so it is shown by this that the coils was taken "out afterwards.

"734 x Q. It does appear, however, that Mr. Cassebeer did work for you in the "fall of 1879, doesn't it?

"A. Yes, sir, it does.

"735 x Q. And doesn't it appear that during the months of September and Oc- "tober and November, 1879, Mr. Cassebeer did quite an amount of work for you?

"A. Yes, sir, he was very often doing repairs in our place.

"736 x Q. So far as Mr. Cassebeer's bills and accounts are concerned, is there "anything to show that this work was not done in September, October, or Novem- "ber, 1879?

"A. I think the bills don't show nothing at all when it was done.

"737 x Q. Neither the bill of 1878 nor the bill of 1879 shows when those coils "were removed?

"A. No, sir.

"738 x Q. This Cassebeer bill which you have produced, of October 22d, 1878, "is that a copy of the Gilbert & Meinhard account on page 20 of Cassebeer's book?

"A. I don't know if it is a copy. It is the bill originally given and receipted "by Casseeber to our firm.

" 739 x Q. And that is the bill in payment of which you gave him $11?
" A. Yes, sir.
" 740 x Q. And which is noted on your book as having been paid October 29th, " 1878?
" A. Yes, sir."

By reference to the record your Honor will find that these latter questions and answers were given after an adjournment, when Meinhard produced the lost bill. p. 252.

" 741 x Q. Isn't it a fact that if the removal of those coils by Mr. Cassebeer " is not included in this bill of October 27th, 1878, he then did not remove them " until after September, 1879?
" A. I don't see how I could answer this. I can't know it.
" 742 x Q. Did Mr. Cassebeer do any work for you between September the 7th, " 1878, and September the 24th, 1879?
" A. I think all the work he has done is included in these two bills because I " can't find any other payment made.
" 760 x Q. Isn't it a fact that neither the bill of October 22, 1878, nor the bill of " December, 1879, contains any entry for the removal of these coils?
" A. They contained so many hours work, and I guess it was a little work only " and wasn't no stuff to use, and it might be included in the work, and it must be " included as it was in these bills under so many hours work."

There Meinhard says that the removal of the coils "was a little work only and wasn't no stuff to use." Now by reference to Gilbert & Meinhard's account of 1878, we find every item includes the furnishing of what Meinhard terms "stuff," and Cassebeer admits that the work specified in the account was in connection with the use of the "stuff," furnished. The fact is, according to Meinhard's testimony, that the removal of these coils involved nothing more than disconnecting the brass couplings and the coupling on in their place of the straight pipes that had previously been used—for your Honor will remember that both the coils and the straight pipes were provided with brass couplings at each end. No cutting; no soldering; nothing but the uncoupling of the coils and the coupling on of the straight pipes. p. 253.

" 761 x Q. It would be included under the head, so many hours work?
" A. Yes, sir.
" 762 x Q. Because Cassebeer didn't furnish any material?
" A. No, sir.
" 763 Q. He simply took the coils out?
" A. Yes, sir.
" 764 x Q. Describe how he took out the coils?
" A. I guess he unscrewed it where they were connected, or at least one end, " and I am not sure if they were connected at both ends, but at least at one end " they had brass connections, and had some trouble to take those out, and the " other ends I am not sure of, but I am sure about this, that it was a small matter " and that no material used to it, except perhaps, a little solder.
" 765 x Q. Do you remember that any solder was used?
" A. I can't say that I looked at i. when he had done it.
" 766 x Q. You say that one of the coils was connected by couplings; what end " was that?
" A. I am not sure to-day, but I was pretty sure about it five years ago. I " think it was couplings on both ends, but I am not sure of it to-day.
" 767 x Q. You are not willing to swear to-day whether there were couplings " at both ends or not?
" A. No, sir.

" 768 x Q. If there were couplings at both ends, then he simply had to un-
" couple them ?
" A. Yes, sir.
" 769 x Q. And in that case no solder was required ?
" A. No, sir.
" 770 x Q. Let me refresh your recollection by referring to your former testi-
" mony, and asking you if this is correct ; ' Cross-question 70. How were these
" 'coils connected, with the supply pipes and faucets ? A. They were fastened by
" 'brass couplings on each end. How were the supply pipes connected with the
" 'faucets before you used the coils ? A. They connected in the same way with
" 'couplings.' ?
" A. If I said so five years ago I am quite sure to-day it is correct, for I knew
" better at the time than to-day.
" 771 x Q. You knew better then than you do to-day, is that it ?
" A. Yes, sir.
" 772 x Q. Then you state at the present time, after having your recollection
" refreshed by the reading of your former testimony, that the coils were connected
" at both ends by brass couplings, do you ?
" A. Yes, sir.
" 773 x Q. Then isn't it the fact that Mr. Cassebeer in the removal of these
" coils had simply to uncouple them ?
" A. Yes, sir.

I will ask your Honor to bear in mind, when we come to a consideration of Cassebeer's testimony, that the removal of the coils involved simply the uncoupling of the brass couplings at each end of the coils, and the coupling on of the straight pipes at each end, and that no "stuff" was necessary.

It does seem to me that the Meinhard & Gilbert account completely destroys, not only Meinhard, but Cassebeer,—as your Honor will observe when we come to a consideration of Cassebeer's testimony,—for it establishes beyond question that the coils, if they were ever in, could not have been removed until the latter part of 1878, and creates a strong presumption that the coils were not removed until after the fall of 1879, since there is nothing in the account of 1878 indicating that it included the work of the removal of the coils, while there is much in the account of 1879,—as for instance, item for work only—that might include the work of the removal of the coils.

Accepting the statements made by Meinhard on his direct examination (and I do not see how you can disregard them without disregarding his entire deposition) that the rubber hose were not placed around the beer-supply-pipes until after the removal of the coils, we have it established that no rubber hose were placed around the beer-supply-pipes before the fall of 1878, while it is not established when, if ever, after that, the rubber hose were placed around the beer-supply-pipes.

There is as much, if not more, reason for assuming that, as I already stated, the coils were not removed until the fall of 1879, and consequently the rubber hose not placed around the beer-supply-pipes until after then—which would make it several months subsequent to the date of Gordon's invention—as that they were removed in the fall of 1878.

Can anyone read the testimony which I have quoted without

becoming thoroughly convinced that Meinhard is not to be believed, and that the defendants have failed to establish "**beyond a reasonable doubt,**" when, if ever, Meinhard placed the rubber hose around the beer-supply-pipes, much less that he did so prior to the date of Gordon's invention—June, 1879.

By what rule of law can Meinhard be heard to deny his sworn statements, that the rubber hose were not placed around the beer-supply-pipes until after the removal of the coils, and that, too, when it is shown that the denial is prompted by the discovery, that the coils could not have been removed in 1877, when he asserts he added the rubber hose.

It appears, however, by the testimony of Barr, one of the defendants' witnesses, that the coils were in the bottom of the upper ice-box as late as the year 1880. p. 386.

Barr testifies, that he did some repairing upon Meinhard's apparatus (~~Defts. Rec., p. 160, Q. 7~~)—"I couldn't remember the exact date; "some time in 1877 or 1878," and that at that time, "there was coils of pipe "inside of the upper ice-box, and I had to take one of them out to repair it," (Ques. 20); that "some two years after that" (~~Defts. Rec., p. 166, x Q. 68~~)—which would be 1879 or 1880—he put in "a soda fountain apparatus" for Meinhard, the pipe leading from the fountain in the cellar passing through the ice-box in the saloon : p. 391

"72 x Q. Then the pipe leading from the fountain in the cellar to the saloon "ran through this beer-cooling apparatus?
"A. Yes, sir."

In the putting in of which he says he had to take the ice out of the upper ice box, when he saw the coils still in the bottom of the box.

His testimony upon this point is of the most positive character, and leads to but one of two conclusions : either that Meinhard and Cassebeer swore falsely when they said the coils were removed in 1878, or that Barr swore falsely when he says the coils were still there when he put in the soda-water fountain in 1879 or 1880.

Barr says, speaking of the soda-water pipe leading from the fountain in the cellar to the ice box in the saloon : p. 392

"89 x Q. You put that pipe in, did you?
"A. Yes, sir.
"90 x Q. At that time did you examine this beer-cooling appatratus?
"A. No, sir ; not to examine it ; I had to take the ice all out of the upper ice-"box to put the coil in.
"91 x Q. To put the coil of the soda-water pipe?
"A. Yes, sir.
"92 x Q. What was in that ice box when you took the ice out to put the coil of "soda-water pipe in?
"A. There was coils of beer pipe.
"93 x Q. Was there one coil for each beer supply pipe?
"A. Yes, sir.
"94 x Q. And you put this soda pipe coil along side of the beer coil?
"A. Yes, sir ; on top of it.
"95 x Q. How many beer coils were there in the bottom of that ice box at that "time?

"A. I think about three or four.
"96 x Q. Did you find the condition of things in the bottom of the upper ice box when you put in the soda-water pipe the same as when you examined the apparatus in 1877 or 1878?
"A. Yes, sir.

There we have a positive statement from Barr to the effect that the condition of things in the bottom of the upper ice-box when he put in the soda water fountain in 1879 or 1880 was the same as when he examined the apparatus in 1877 or 1878, and that the coils were in the bottom of the ice-box on both occasions.

So, notwithstanding Meinhard's repeated and persistent assertions that the coils were removed in 1878, we have Barr swearing with equal positiveness that the coils were there in 1879 or 1880. Every presumption favors the truth of Barr's statement that the coils were there in 1879 or 1880, and I am inclined to believe, if Meinhard ever placed rubber hose around the beer-supply pipes he told the truth—undoubtedly by accident—when he said he placed them there after the removal of the coils, which probably was in 1881 or thereafter, and after Mr Bartholomay had called his attention to the Gordon apparatus and advised him to examine it and put one in like it. Meinhard admits that Bartholomay did so advise him, and that he did thereafter examine the apparatus and obtain a circular like that marked "Complainant's Exhibit Magin Circular," which contains a cut of the Gordon apparatus, with a full description of its construction and operation.

Furthermore, complainant's witnesses, Schanz, Raymond Stief and Hahn, all testify to the coils being in the bottom of the upper ice-box in 1879 and 1880.

Schanz, who was Meinhard's regular bartender, having this apparatus in charge from the "fall of 1879 to the spring of 1881—" about a year and a half"—says, that during that entire period the coils were in the bottom of the upper ice-box.

Raymond Stief, who was Meinhard's regular bartender from the spring until the fall of 1879, says that during that period the coils were in the bottom of the upper ice-box; and

Otto Hahn, who, from 1877 to 1881, worked for Meinhard as bartender, on Sundays and evenings, mostly in the concert hall, but frequently in the saloon, when he used the beer-drawing apparatus, says that during all this period there were coils in the bottom of the upper ice-box, one for each faucet.

It seems to me certain that the coils were in the bottom of the upper ice-box as late as the spring of 1881, when Schanz left, and that they must have been removed after that—probably at the suggestion of Mr. Bartholomay, who, it appears, condemned the use of coils and advised Meinhard to examine the Gordon apparatus in Magin's saloon and put one in like it; and that then, if ever, Meinhard put the rubber hose around his beer supply-pipes, in imitation of the Gordon apparatus.

In leaving this question as to the removal of the coils from the

upper ice-box, I call your Honor's attention to a very important statement by Cassebeer as to the time when the coils were removed. While he could not give the date when Meinhard moved from Falls Field, he said that he removed the coils about a year or two before Meinhard moved:

p. 427

"107 x Q. How long before Mr. Meinhard moved away from Falls Field was it "that you did this work?
"A. It may have been a year or two before that.
"108 x Q. It was a year or two before Mr. Meinhard moved away from Falls "Field?
"A. In that neighborhood.
"109 x Q. You went to Mr. Meinhard's, as I understand your testimony, to "take the coils out of the upper ice-box?
"A. Yes, sir."

MEINHARD MOVED FROM FALLS FIELD IN 1883, and if, as Cassebeer says, he removed the coils a year or two before Meinhard moved, it would make it in 1881 or 1882, which is probably the time when he did remove them, and this is in accord with the testimony of the complainant's witnesses, to the effect that the coils were in the bottom of the upper ice-box as late as the spring of 1881.

And now as to the rubber hose that Meinhard claims to have placed around the beer supply-pipes, and which on his direct examination he said "were about three feet long so as to lead the ice-water down into the ice-house," and were fastened by being drawn over the tin pipes, which he claims projected "about two inches," below the bottom of the saloon ice-box; these tin pipes being "about an inch wide," and the rubber hose of about the same diameter, the hose extending from the bottom of the upper ice-box down into the lower ice-box "a few inches." In the Welker case he said the rubber hose were "about three feet long" and "about one inch inside diameter—about the same inside as the tin pipes outside," and that they extended into the lower ice-box just "far enough to run the water into it;" that while this apparatus was in use—"Sometimes we had to change them, take off the old and put on the new" and when asked, "How often did you have to change the rubber hose?" he answered, "Not very often, only when they were in too bad condition—too dirty—we would have to take them out and wash them or put on new."

p. 527

"87 x Q. How often did you have to wash them?
"A. I should think about twice a year."

Neither on his direct examination, nor in the Welker case, did he say where he obtained the rubber hose, nor what difficulty, if any, he experienced in placing them around the beer supply-pipes; in short, he gave no particulars other than that he used rubber hose about three feet long and an inch in diameter.

It is to his cross-examination in these cases that we must look for the particulars; particulars which I assert with great confidence will satisfy your Honor as to the impossibility of Meinhard's story and that rubber hose were never used by him.

He was compelled to admit, on cross-examination, that the rubber hose must of necessity have been much longer than three feet; this because a calculation based upon the measurements given by him showed that the rubber hose would have had to have been more than six feet long to reach from the bottom of the upper ice-box into the lower ice-box a "few inches," as he says it did. He also admits that the rubber hose, after, as he claims, being placed around the beer-supply-pipes were never taken off, for cleaning or any other purpose, and that no new hose was ever used.

He says that he placed the rubber hose around the beer-supply-pipes without the assistance or knowledge of anyone; but the measurements he gives, and the direction which he says the pipes ran make it an utter impossibility for a man of Meinhard's size, or in fact any one man, to have placed rubber hose around those beer-supply-pipes. A look at the models of Meinhard's apparatus will satisfy your Honor how utterly impossible such a thing would be.

Defendants' counsel, realizing the effect of the cross-examination upon this point, and knowing his witness, endeavored to counteract it by asking Meinhard: p. 348 384

"1194 Re-D. Q. Complainant's counsel in his cross-examination endeavored to "convey the impression that you were not tall enough to put on this rubber hose "on the beer-supply-pipes alone. Please describe how you put the rubber hose on?

"A. I don't recollect all the details just below now, but I suppose I had to "stand on some kegs in the ice-house to reach up."

Realizing, himself, how impossible it was, he endeavors to crawl out of it by saying "I suppose I had to stand on some kegs in the "ice-house to reach up?"

He would, indeed, have had to stand ON SOME KEGS—a number of them—and even then, I assert, as an examination of the model will prove, that neither Meinhard, nor any other man, could, without assistance, have placed rubber hose around the beer-supply-pipes. Not only did he have to slip them over and get them up through the hole where the beer-supply-pipes came into the lower ice-box, but he had to get them from there up through the floor and into the closet and around the small tin pipes, if his story is to be believed. How did he reach up on the outside of the ice-box to get the rubber hose as they came through, and up to and through the saloon floor?

He had no beer kegs there, and the measurements which he gives shows that he could not possibly have reached the rubber hose, even had he stood upon the tips of his toes; and yet he was asked: p. 384

"1195 Re-D. Q. I ask you to explain to the Court how you put the rubber hose "on?

"A. I took off, first, the rubber hose at the ends of the supply-pipes and drawed "this rubber over the supply-pipes and pushed it through the hole in the ice-house "and took them afterwards to shove them up through the floor, and this box under "the upper ice-box was fastened there to the tin pipes."

What an explanation! And that too, when in the answer before that he told us "I don't recollect all the details just now."

But defendants' counsel was not satisfied, and pressed him further with the question:

"1196 Re-D. Q. Did you find any difficulty in doing so?
"A. Not at all; it was quite easy to do it." p. 384

Quite easy, indeed! Nothing appears too difficult for this witness. Not even the difficulty of such a little thing as disregarding his oath. Then is it to be supposed that he would experience much difficulty in placing the rubber hose around the beer-supply pipes, which to any one else would have been an impossibility?

He says that the rubber hose which he used was "old hydrant hose," which he had about the place, and had used for the hydrant in the garden for sprinkling purposes, and that this hose was at least an inch inside and an inch and a quarter outside diameter. But it is established beyond all question by the testimony of Frank E. Witherspoon, Registrar of the Water Works Department of the City of Rochester, that the hydrant in the garden did not permit of the use of a hose of larger outside diameter than three-quarters of an inch.

With such contradictions, how can your Honor give any credence to any statement Meinhard makes?

You must recognize the importance of the testimony as to the size of the hose used, for Meinhard and his alleged corroborating witnesses all assert that the rubber hose was of at least an inch and a quarter outside diameter.

To avoid any uncertainty upon these important points let us refer to the cross-examination: p. 325

"345 x Q. When you put rubber hose on, as you claim to have done, did you "enlarge this hole through which the beer-supply-pipes entered the lower ice-box?
"A. Yes, sir; had to enlarge it a little."

There your Honor will observe he states as a fact that he had to enlarge the hole through which the beer-supply-pipes passed. Yet immediately after he says that he has no recollection of having enlarged that hole, but *thinks* he must have enlarged it a little: p. 325

"346 x Q. You remember enlarging it?
"A. I don't recollect exactly; but I don't think it was big enough, and had to "enlarge it a little.
"347 x Q. That is, you think it must have been enlarged?
"A. Yes, sir."

May it not be that the only foundation for his statement that he placed rubber hose around the beer-supply-pipes is that he *thinks* he must have placed them there, because it would have been a good thing. Had he not been further pressed, it would have appeared as a fact that he did enlarge that hole.

Using this as an illustration, and it is but one of (I don't think

I would overstate it in saying) hundreds of like instances, what reliance can your Honor place in any statement he has made? Can it not be very properly assumed that had he been further cross-examined he would have eventually said, "I don't recollect exactly" that I put rubber hose around the beer supply-pipes, but I "think I must have done it," for that is precisely what he did do when questioned about the enlargement of this hole.

" 350 x Q. Do you, or not remember enlarging that hole?
" A. Well I guess I enlarged it, but I am not quite sure. I guess I had to do " it, but I can't recollect just now if the hole was big enough, or not. I know " there was a pretty large hole to put it through, and, if it was before or not, I " don't recollect just now.
" 351 x Q. How large was that hole into the lower ice-box?
" A. I guess it was about five inches, I should think—not exactly square, but " about five inches big."

In the Welker case, however, he said, that the hole was "about " six inches" (~~old Rec. p. 11, x Q 89 and 90.~~)

" 355 x Q. If rubber hose were ever put around the beer-supply pipes, you put " them around yourself, didn't you?
" A. Yes, sir.
" 356 x Q. And you did that yourself, without the assistance of anybody?
" A. I did, sir."

* * * * * * * *

" 419 x Q. You are certain that you put the rubber hose around the beer supply " pipes yourself, aren't you?
" A. The rubber hose I know I put on myself, yes, sir.
" 420 x Q. You know, then, that you put the rubber hose around the beer sup- " ply pipe yourself?
" A. Yes, sir.
" 421 x Q. And you did that by just bending it over?
" A. Yes, sir.
" 422 x Q. And following the direction of the beer supply pipes?
" A. Yes, sir.
" 423 x Q. You didn't take the beer supply pipes out, did you?
" A. I did not.
" 424 x Q. You simply slipped it over the beer supply pipes?
" A. Yes, sir.
" 425 x Q. Did you start first in the cellar?
" A. Yes, sir.
" 426 x Q. Or start up stairs first?
" A. It was started in the cellar. We took the wire off, and put this hose that " was so much wider we could put it over very easy.
" 427 x Q. How much wider was it?
" A. I guess it was about twice as big as the other one."

There he says that the rubber hose which he placed around the beer-supply pipes "was about twice as big as the other one,"—that is, the beer supply pipe—which would make the inside diameter of the rubber hose at least an inch, if not more; and so he informs us immediately following:

" 428 x Q. What was the diameter of the rubber hose that you slipped over the " beer supply pipes?
" A. I think they were about *an inch*. I don't know whether *an inch and a*

" *quarter outside, or an inch and a half* ; but they were wide enough to get over " the tin pipes in the other ice-box.

" 429 x Q. And you did all that yourself?

" A. Yes, sir.

" 430 x Q. So that really you are the only person who can testify as to your " putting on those rubber pipes?

" A. Well, I suppose some others have seen it afterwards, but when I done it " there was nobody else to help, because it was an easy job.

" 431 x Q. That is what I mean ; that is, that you are the one only person who " can swear to putting on of those pipes, no one having seen you do it?

" A. No one see me put it on, I guess."

* * * * * * * p. 330.

" 435 x Q. How long was each of those rubber pipes surrounding the beer- " supply pipes?

" A. According to the lower part of the upper ice-box and a little room in the " cellar, and going through the side of the ice-box, they must have been three or " four feet, I should think."

There your Honor will observe Meinhard's first effort to increase the length of the rubber hose, having already observed that they must os necessity have been more than three feet long to reach from the bottom of the upper ice-box down into the lower ice-box, as he said they did.

According to the testimony of Albert Stief, the distance between the bottom of the upper ice-box and the saloon floor was more than three feet. (~~Deft.'s Rec., p. 82~~) : p. 294.

" 205 x Q. How far was the upper ice-box from the saloon floor?

" A. I should judge about three and one half or four feet;"

in which case the rubber hose, if extending from the bottom of the upper ice-box into the lower ice-box, must of necessity have been two or three times as long as Meinhard says.

Barr, Jr., another of defendant's witnesses, says that it was about four feet from the bottom of the upper ice-box to the saloon floor. (~~Deft.'s Rec., p. 165~~). p. 390.

" 57 x Q. How far was the upper ice-box above the floor?

" A. From the faucets I think it was about four foot eight ; I should judge " that.

" 18 x Q. How far were the faucets from the bottom of the upper ice-box?

" A. About nine inches.

" 59 x Q. Then it was about four feet from the bottom of the upper ice-box to " the floor of the saloon?

" A. Yes, sir, very near that."

Barr, Jr., havign testified as to his knowledge of this apparatus, finally furnished us with the important information that it would have taken, to surround the beer supply pipes, from the bottom of the upper ice-box to their entrance into the lower ice-box, from ten to twelve feet of rubber hose. In that he is probably correct, since a calculation based upon the measurements given, show that *it* would have required about that length of hose (~~Def'ts. Rec.~~, p. 195).

p. 413.

"476 x Q. Now, with your knowledge of this Meinhard apparatus, what length "of pipe would it take to enclose the beer-supply pipe as it left the upper ice-box "until it entered the side of the lower ice-box?

"A. I should say in the neighborhood of ten or twelve feet."

And here it should be remembered, that Meinhard, in endeavoring to stretch the length of the rubber hose, admits that he never measured them.

p. 331.

"436 x Q. Do you remember how long they were?

"A. No, sir, I didn't take no measure; but I think they were between three "or four feet.

"437 x Q. Never measured them?

"A. No, sir.

"438 x Q. And you can't tell how long they were?

"A. No, sir; all I know is according to the apparatus and I know how long "they had to be."

Finally Meinhard tells us that the rubber hose must have been more than three feet long, and the reason why, and had he had sense enough to have calculated it closely, he would have discovered that, as Barr, Jr., states, it would have required from ten to twelve feet of hose.

p. 360.

"866 x Q. Did you thus testify on your former examination in the Welker and "McKay cases: '33 x Q. How long are those rubber tubes? A. About three feet I "'should say, the rubber hose.'

"A. If I said about three feet it might have been a little shorter or a little "longer. *It appears, they had to be a little longer than this.*

"867 x Q. It now appears, does it, that they had to be a little longer?

"A. Yes, sir.

"868 x Q. From what does that appear?

"A. From the proportion of the box, and so on.

"869 x Q. By calculating in your head the distances?

"Yes, sir.

"870 x Q. And from that you say that the length of the rubber pipe must have "been more than three feet, don't you?

"A. Yes, sir.

"871 x Q. And consequently you say now that the rubber hose surrounding "the beer-supply pipes must have been more than three feet?

"A. Yes, sir."

It is "the proportion of the box, and so on," as given by Meinhard and his alleged corroborative witnesses, that make it appear beyond question that the rubber hose, in order to surround the beer supply pipes, as claimed, must have been much longer than from three to four feet.

Meinhard says that the closet underneath the saloon ice-box was about two feet high, although all the other witnesses say about four feet high; the joists supporting the saloon floor were a foot in depth, and the lower ice-box was "eight feet or between seven and eight feet" high.

The beer supply-pipes, says Meinhard, were "between ten and twelve feet long."

The beer supply-pipes commenced at the coupling onto the end of the connecting coil or straight pipe—as the case may be, which it is claimed was just over the top of the tin pipes, which pro-

jected, as Meinhard says, about five inches above the bottom of the ice-box; passed through these tin pipes, down through the closet to the floor, through the floor and between the joists, then backward under the joists

" because the lower ice-box wasn't right under the upper, but in the rear of it,"

into and through the side of the lower ice-box about a foot below the top, the thicknes of the ice-box being about six inches through.

The rubber hose, as they passed under the joists and into the side of the lower ice-box, were exposed " not much more than a foot," and extended into the lower ice-box a few inches.

The beer kegs "on tap" were kept " just on the same side where those beer pipes had gone down," the beer supply-pipes extending to within about three feet of the kegs, where they were connected to the faucet by a piece of rubber hose about three feet long.

" 358 x Q. Do you know what was the length of the beer-supply pipes?
" A. According to the height of the cellar and that part in the ice-box, I should " think betwen ten and twelve feet.
" 359 x Q. That is, it would have taken about ten or twelve feet of pipe to reach " from where the kegs were in the lower cellar to the upper ice-box?
" A. Yes, sir.
" 360 x Q. In what part of the lower ice-box were the kegs kept?
" A. Just on the same side where those beer pipes had gone down.
" 361 x Q. So that as the beer-supply pipes come through and into the ice-box " the pipes went straight to the kegs; is that it?
" A. Yes, sir, they did; but they had pieces of hose on it yet.
" 362 x Q. Then the beer-supply pipes were about ten to twelve feet long with- " out the pieces of hose?
" A. I should think so.
" 363 x Q. Had each beer-supply pipe a separate hose?
" A. Yes, sir, they have.
" 364 x Q. And how long was each piece of hose?
" A. I guess the pieces of hose are about three feet.
" 365 x Q. About three feet long?
" A. Yes, sir.
" 366 x Q. And one end was fastened on to the beer-supply pipe?
" A. Yes, sir.
" 367 x Q. And how was it fastened on to the end of the beer-supply pipes?
" A. By a piece of wire.
" 368 x Q. Wired on?
" A. Yes, sir.
" 369 x Q. And the other end of the rubber hose—where was that attached?
" A. The other end? there was a coupling on to connect with the faucet.
" 370 x R. And each beer supply pipe had its piece of rubber pipe wired on to " the end of the beer-supply pipe, and coupled onto the faucet of the keg?
" A. Yes, sir.
" 371 x Q. What was the size of the beer-supply pipes?
" A. I think they were about half an inch."

If, as Meinhard says, the beer supply-pipes were from ten to twelve feet long, and only extended into the lower-box sufficiently far to be connected with the faucets in the kegs by rubber hose three feet long, they could have extended into the lower ice-box, not to exceed three or four feet. Now remembering that the rubber hose extended into the lower ice-box a few inches, it is evi-

dent that the rubber hose, in order to surround the beer supply-pipes from the upper to the lower ice-box, must have been as long as the beer supply-pipes, less the additional distance that the beer supply-pipes projected into the lower ice-box, which certainly did not exceed three feet, according to the figures given, and say about six inches, the thickness of the bottom of the ice-box (one inch), and the height that the tin pipes extended above the bottom of the upper ice-box (five inches),--which would have made the length of the beer supply-pipes at least from seven to nine feet, depending upon whether the beer supply-pipes were ten or twelve feet.

Any calculation made upon the measurements given proves most conclusively that the rubber hose, if they ever were around the beer supply-pipes, must have been far longer than from three to four feet.

Although Meinhard says that he placed rubber hose around the beer supply-pipes " without the assistance of anybody," it is, as I have already stated, quite apparent, from the description and the measurements which he has given, that such a thing was impossible, especially when you consider that Meinhard was a man only " about five feet and a half " high.

" 493 x Q. How tall are you?
" A. I am not sure.
" 494 x Q. Will you stand up while I have you measured?
" A. Yes, sir.
" 495 x Q. And now having been measured, how tall do you find yourself?
" A. Well, if the measure is right, it is about five feet and a half.
" 496 x Q. Now, Mr. Meinhard, stand up again and put up your right hand " until I see how far up you can reach?

(The measurement was taken; six feet eight and a half.)

" 497 x Q. Now, do you pretend to tell us that you alone put that rubber hose " over the beer-supply pipes?
" A. Yes, sir.
" 498 x Q. And brought it up to the upper ice-box?
" A. Yes, sir.
" 499 x Q. You did that alone?
" A. Yes, sir."

How does your Honor suppose that it would be possible for him to do such a thing without assistance when the course of the pipe was through the upper end of the lower ice-box, as near the top as possible,—the height of the box being between seven and eight feet,—then slanting over under the joists, up between the joists to the floor, through the floor, up through this closet under the upper ice-box?

Does not the mere statement of his having done that without the assistance of anybody, in view of its impossibility, stamp his whole story as untrue?

He was again asked as to the diameter of the rubber hose which he claims to have used, and re-asserts that it was "a little over an inch"—speaking of the inside diameter:

" 872 x Q. What was the diameter of the rubber hose surrounding the beer-
" supply-pipe?
" A. I think the diameter was a little over an inch.
" 873 x Q. Do you remember of having testified yesterday that the diameter
" was probably an inch and a half?
" A. I don't recollect now, but an inch and a half would be over an inch
" anyhow.
" 874 x Q. Did you testify on your former examination in the McKay and
" Welker cases: '34 x Q. What was the diameter of the rubber hose? A. I guess
" ' it might be about one inch inside. They are about the same inside'?
" A. I think it was so.
" 875 x Q. At the present time it is your recollection that they were more than
" an inch in diameter, isn't it?
" A. If it was an inch inside it was more than an inch outside, sure. If I state
" diameter I mean by this it was more than an inch outside.
" 876 x Q. The diameter of the tin waste pipes you stated was an inch, didn't
" you?
" A. It is about an inch. I don't know if it was a little less or a little more,
" but I am sure it was about an inch.
" 877 x Q. And the rubber hose slipped over this tin pipe, did it?
" A. Yes, sir.
" 878 x Q. So that the inside of the rubber hose must have been more than an
" inch; isn't that so?
" A. It must have been more; it was about an inch. I know it was a little
" troublesome to get it over, so it kept on without being fastened otherwise, because
" it slipped on pretty hard and wasn't easy to put it on."

Now he tells us for the first time where he obtained the rubber hose which he claims to have used.

" 441 x Q. Where did you get the rubber hose for that purpose?
" A. This was rubber hose we had, and I suppose I took the idea to put them
" on; some water hose we had there.
" 442 x Q. Hose that you had for sprinkling?
" A. Yes, sir.
" 443 x Q. And you took that old hose?
" A. Yes, sir.
" 444 x Q. How long have you had this old hose?
" A. I can't recollect; I guess we had it from the day we commenced business
" there.

* * * * * * * *

" 447 x Q. What use had you made of this rubber hose before?
" A. We had used it for sprinkling at first.
" 448 x Q. Did you have the city water in your place?
" A. Yes, sir; we had.
" 449 x Q. And this hose you used in connection with the city water?
" A. Yes, sir.
" 450 x Q. You had hydrants and plugs from the city works, hadn't you?
" A. Yes, sir.

* * * * * * * *

" 454 x Q. Had you in your saloon the ordinary city hydrant for getting water?
" A. In the saloon we used the water in the bar and driving this pump and
" everything else.
" 455 x Q. You got that all from the city water works, did you?
" Yes, sir.
" 456 x Q. The ordinary hydrant?
" A. Yes, sir.

* * * * * * * *

" 778 x Q. Could it be that that rubber hose was furnished to you by Neuhart,
" and by you used to surround the beer-supply pipes?
" A. It wasn't, because this was old hose and not new hose.

* * * * * * * *

" 780 x Q. The hose which you used for covering the beer-supply pipeswas old " hydrant hose which you had about the place?
" A. Yes, sir.
" 781 x Q. And never had bought any hose for that purpose?
" A. No, sir."

It was old hydrant hose; yet of an inside diameter of more than an inch.

Schaub, one of the plumbers who testified for the defendants, said that the ordinary hydrant was always three-quarters of an inch:

" 376 x Q. What was the ordinary hydrant connection in 1878?
" A. It was always three-quarters of an inch."

And in this he is corroborated by Frank E. Witherspoon, Registrar of the Water Works Department of the City of Rochester, who was subpœnaed and examined on the part of the complainant.

Witherspoon says, that the ordinary size was

" three-quarters of an inch, with a quarter of an inch orifice, unless by special " permission;"

and that neither Meinhard nor the owners of the property had any special permission for a larger size hydrant, and that in the absence of special permission the hydrants at Meinhard)s place

" would have been put in under those rules; three-quarters of an inch with a " quarter of an inch orifice."

Witherspoon's testimony upon this point is as follows:

" 3 Q. What was the rule in 1875 and 1876 and what has been the rule since " that time as regards the ordinary size hydrant connection for household purposes?
" A. The size not to exceed three-quarters of an inch orifice, unless by special " permission.
" 4 Q. In case of special permission for a larger size opening, would application " have to be made and a record kept of that special permit if granted?
" A. Yes, sir.
" 5 Q. Will you read from your book of rules and regulations that section re- " ferring to the size of hydrant openings in 1875 and 1876 and since then?
" A. I don't know that the rule has been changed, so I will read the rule in " 1876. This is from the rules and regulations as laid down by the executive board " 1876. 'Rule 23. Sprinkling will be allowed only from April 1st to December 1st " 'for one hour between six and nine o'clock a. m., for one hour between six and " 'eight o'clock p. m., and with hose three-quarters of an inch in diameter, having " 'a nozzle with quarter inch orifice. If either is larger, an extra charge will be " 'made and will require a special permit therefor.'
" 6 Q. And has that rule continued in force since that time?
" A. It has never been altered to my knowledge. The present rule applies " now.
" 7 Q. Are you familiar with the property known as Falls Field, in the city of " Rochester?
" A. Yes, sir, I know where the property is located.
" 8 Q. Who is the owner of that property, and who has been for years past?
" A. James M. Whitney.
" 9 Q. In case of application being made for special permission under the rule

" you have read, would it be made in the name of the property owner or the les-
" see?
" A. It would be made in the name of the property owner.
" 10 Q. Do you know who was the lessee of that property in 1877, 1878 and
" 1879?
" A. No, sir.
" 11 Q. Have you examined the books of the water department for the purpose
" of seeing if application was made for special permission, and if any special per-
" mit was granted in connection with this property known as Falls Field since
" 1875?
" A. I have.
" 12 Q. Was any application made and any special permit granted?
" A. Not that I could find any record of, no, sir.
" 13 Q. From the fact that your search disclosed no record of an application for
" or special permit granted, what do you say was the size of the water supply pipes
" at Falls Field in the years 1876 and 1877, 1878 and 1879?
" A. The supply pipe would be larger perhaps than the openings from the pipe.
" 14 Q. I want the size of the opening to which the hose would have to be at-
" tached?
" A. It would have to be put in under those rules; three quarters of an inch
" with a quarter of an inch orifice.
" 15 Q. Three quarters of an inch would be the largest, except in case of a
" special permit?
" A. Yes, sir.
" 16 Q. And no special permit was granted, as far as that property is con-
" cerned?
" A. No, sir.
" 17 Q. Did the rule which you read apply to all the city of Rochester during
" these years?
" A. Yes, sir."

On cross examination, Witherspoon said that there was a fountain in the garden of Meinhard's place, and when questioned in reference to same, he said:

" 21 x Q. Would the same size taps be used in such a fountain as would be or-
" dinarily used for street sprinkling purposes?
" A. No, sir; it would be smaller.
" 22 x Q. What size would they be?
" A. An eighth of an inch would be an extremely large one. They run eighth
" and sixteenths and thirty-seconds.
" 23 x Q. Do your books show that such faucets or hydrants were used in Falls
" Field while owned by Mr. Whitney?
" A. To answer that, I will read from the report of the inspector. There is a
" report of the inspector on the 29th of June, 1876. Property of James M. Whitney,
" North St. Paul street. He reports a garden with a fountain one hose bib or at-
" tachment, one plain bib in the cellar, and a water closet on the first floor and two
" urinals and two water closets on the third floor. That I guess is in the house.
" The service was metered. We had a meter on there that metered all the water
" used."

There we have, from the inspector's report, an accurate statement of the water taps upon the property occupied by Meinhard; from which it appears, that there was one "hose bib or tap"—that is, a street hydrant—and one "plain bib" in the cellar; and he explained that the difference between a "hose bib" and a "plain bib" is, that the plain bib is without a thread, while a hose bib has a thread in order to attach a hose for sprinkling purposes.

His cross-examination simply served to demonstrate beyond question the fact that the largest sized hose that could possibly have

been used in connection with the hydrant on Meinhard's place was three quarters of an inch :

"30 x Q. And what was the ordinary size water attachment used for sprinkling "purposes at that time?
"A. Three quarters inch pipe with a quarter-inch orifice.
"31 x Q. What would be the size of a hose which would fit on such an attach-"ment?
"A. That is the size of the hose.

* * * * * * * *

"34 x Q. That is the ordinary sized hose used for such purposes?
"A. Yes, sir; the same as everybody uses for ordinary sprinkling.
"35 x Q. Are there any hose larger than three-quarters inch in diameter used "for sprinkling purposes, to your knowledge?
"A. Not to my knowledge; no, sir.
"36 x Q. The general size is three-quarters?
"A. Yes, sir.
"37 x Q. That is the size that is allowed by the water works department of this "city?
"A. Yes, sir.

* * * * * * * *

"69 Re-D. Q. Then your regulations prohibit the use of hose in connection with "that to exceed three-quarters of an inch in diameter?
"A. Yes, sir; it did.
"70 Re-D. Q. That regulation has reference to the diameter of the hose to be "used?
"A. Yes, sir.
"71 Re-D. Q. I notice in your book here it is stated 'one hose bib one fountain, "garden'; both of those were located in the gareen, weren't they?
"A. Yes, sir; the hose bib and the fountain.
"72 Re-D. Q. And the hose bib was entirely separate from the fcuntain?
"A. Yes, sir.
"73 Re-D. Q. And that was arranged so as not to permit of the use of the hose "to exceed three-quarters of an inch in diameter?
"A. Well, of course they could have larger hose if they had special permision "to use it.
"74 Re-D. Q. Had they no special permission in connection with this property?
"A. Not to my knowledge.
"75 Re-D. Q. You made a search of that particularly?
"A. Yes, sir, and I couldn't find any such thing on the books.

In addition we have the testimony of Doran, a plumber who did the plumbing work in connection with the reconstruction of the falls Field property immediately after Meinhard vacated the premises. He says there was only one "hose bib" for sprinkling purposes on the premises, and that was located in the garden near the fountain, and that it was for a three-quarter inch hose. His testimony was as follows (~~Comp. Rec., p. 425~~) :

"9 Q. Did you find upon that property a hydrant connection for hose, what is "commonly known as a sprinkling hydrant?
"A. It is a hose bib; it is for sprinkling purposes.
"10 Q. You found a hose bib for sprinkling purposes there, did you?
"A. Yes, sir.
"11 Q. More than one?
"A. Only one.
"12 Q. Where was that one located?
"A. Out in the yard near the fountain.
"13 Q. What was the size of that hose bib?
"A. Three-quarters.

And upon cross-examination he testified:

p. 242

"14 x Q. Did that hose bib have a thread on it?
"A. Yes, sir.
"15 x Q. What would be the size of the rubber hose used on such a bib?
"A. Three-quarters.
"16 x Q. That is, three-quarters inside?
"A. Yes, sir; always measure them on the inside.
"17 x Q. That would be about an inch hose outside, I suppose?
"A. Yes, sir; probably would vary some.
"18 x Q. That hose would be generally called an inch hose, would it?
"A. No, sir; three-quarters. Measure them always on the inside."

Now, where did Meinhard get this rubber hose, which he says was "a little over an inch" inside diameter, "either an inch and a quarter outside or an inch and a half," and it must be nearly an inch and a half inside diameter, since he says he slipped it over the outside of the tin pipes projecting from the bottom of the upper ice-box, which pipes were of at least an inch inside diameter.

He says it was old hydrant hose which he had used for sprinkling purposes; but have we not conclusively established that he could have had no such hose upon the premises, since the largest size hydrant hose that he or his predecessors could or did use, was three-quarters of an inch, both because that was the size of the hose bib, and because the rules of the water department prohibited the use of a larger size.

It may be said that the size of the rubber hose is not material. But it is material, since to convert the Meinhard apparatus into the Gordon, it is necessary that there should have been air and water passages from the upper to the lower ice-box, to create which it require the use of rubber hose sufficiently large as to not only surround the beer-supply pipes, but to leave what could be fairly said to be a water and air passage; and therefore Meinhard was compelled to say, as he did, that the rubber hose was more than an inch inside diameter to leave it of sufficient size to create such a passage and be slid over the outside of the tin pipes in the bottom of the upper ice-box. Had he simply used rubber hose of a diameter sufficient only to surround the beer-supply-pipes, and not leave a water and air passage, there would be no pretence of its being the Gordon apparatus, or anything resembling it. Considering the fact that the beer-supply-pipes were, according to Meinhard's statement, of at least half an inch inside diameter, your Honor will observe that the use of hose of even an inch inside diameter, would leave but a very small air and water passage, and that the use of a three-quarter inch hose—which was the size of the hydrant hose that Meinhard had, if he had any—would leave substantially none. Certainly nothing that I think your Honor would be willing to say was the air and water passage of the Gordon patent.

If we have established—as I submit we have—that Meinhard never had upon his premises rubber hose of an inch or more

than an inch inside diameter, does it not follow that he never used rubber hose around the beer-supply-pipes for conducting the water from upper to the lower ice-box? For his entire story is based upon the presence of rubber hose of an inch or more than an inch inside diameter. Of necessity so, because he has sworn that as Neuhart left the apparatus, there were three tin pipes of an inch inside diameter, projecting from the bottom of the upper ice box, over which he slid the rubber hose,—that being the only means he had of fastening it there.

Will your Honor accept Meinhard's story as true, when he not only fails to account for the presence of the rubber hose—the presence of which is necessary to make the apparatus an anticipation of the Gordon patent—but when it is affirmatively established that he had no such rubber hose as he says he used—old hydrant hose previously used for sprinkling purposes—of an inch or more than an inch inside diameter?

Hardly a statement of fact made by Meinhard in his deposition in the Welker case but what he was contradicted on his cross examination in these cases.

He said, in the Welker case, speaking of the use of rubber hose surrounding the beer-supply pipes:

"Sometimes we had to change them, take off the old and put on the new; and when asked, "How often did you have to change the rubber hose; replied: "Not very often; only when they were in too bad condition—too dirty "—we would have to take them out and wash them, and put on new." And being asked, "How often did you have to wash them?" replied, "I should think twice a year."

All of which he either denies or has no recollection of on his cross-examination in these cases. If it was a fact, as then testified to, it is impossible to believe that he would have forgotten it when cross-examined in these cases. Whether true or false, it serves quite well to again illustrate that no confidence can be placed in any statement made by Meinhhrd.

His cross-examination upon that point is as follows;

"554 x Q. At no time after putting the rubber hose around the beer-supply "pipes did you take it off; is that it?

"A. I don't recollect if I ever took it off or not.

"555 x Q. It is your recollection that you continued to use that same rubber "hose until the apparatus was taken out, is it?

"A. I am not sure about this; it may have been changed, but I don't recollect "when it was ever changed, or if I changed it or somebody else, and I couldn't "say.

"556 x Q. Then it is your best recollection that the rubber hose which you "originally put around the beer-supply pipes was used until the apparatus was "taken out, is it?

"A. I couldn't say if it was or was not.

"557 x Q. Do you remember of ever taking off this rubber hose after putting "them on?

"A. I don't recollect about this.

" 558 x Q. You certainly never substituted new rubber hose for the old, did " you?

" A. I don't know anything about it. If any other parts was put on I am quite " sure we took some of the old pieces, yet.

" 559 x Q. You don't remember ever buying any new rubber hose for this pur- " pose, do you?

" A. I do not.

" 560 x Q. And you don't remember ever using any rubber hose except that " which you originally put on, do you?

" A. I do not.

" 561 x Q. And you don't know of any one else ever having put rubber hose " around the beer supply pipes but yourself, do you?

" A. No, sir.

" 562 x Q. Would anyone around your place have attempted to remove the rub- " ber hose around the beer-supply pipes, or substituted others without your knowl- " edge?

" A. It might have been. There might have been some of the men take them " off sometimes and put other pieces on, but I don't recollect now.

" 563 x Q. If anything of the kind was done, you didn't know it?

" A. No, sir; I didn't know it."

Your Honor will observe that Meinhard's recollection grew very bad as his cross-examination proceeded, but even with his bad recollection, and his effort—which is quite apparent—to avoid giving a precise answer, he had to admit that he had no recollection of the rubber hose which he claims to have placed around the beer-supply pipes ever having been taken off, for any purpose whatsoever.

Being further cross examined upon this point, he testified:

R. 355.

" 782 x Q. And once put on, you left the hose around the beer-supply pipes?

" A. I left it on, but I am not sure it wasn't changed afterwards; it might have " been changed, but I don't know anything about it.

" 783 x Q. You don't know of it having being changed, do you?

" A. I don't know if it was or not.

" 784 x Q. You don't know of that rubber hose ever having been taken off the " beer-supply pipes?

" A. I couldn't say.

" 785 x Q. Do you know of it having been done?

" A. I don't know if it was taken off and replaced with others, or not.

" 786 x Q. You never took it off yourself, did you?

" A. I don't recollect that I did.

" 787 x Q. Do you recollect of ever having done it?

" A. I don't recollect that I did."

I have quoted sufficient to establish the contradiction, and I quote the remainder of his cross-examination upon this point to show your Honor, that, as on former occasions, he endeavors to explain away the contradiction when brought to his attention, by showing that it was his opinion that it was done, because it ought to have been done:

R. 378

" 1134 x Q. If the rubber hose around the beer-supply pipes became stopped up, " how were they cleaned out?

" A. I couldn't say to-day how they were cleaned out, but it was an easy mat- " ter to take them off and clean them out, and I should think it was done on some " occasions, but to-day I couldn't say who done it or how often it was done, but my " opinion is they ought to have been cleaned out on some occasions.

" 1135 x Q. Haven't you already testified during the course of your cross-exami- " nation that those rubber pipes were never taken off after you put them on?

" A. Never taken off? This wouldn't say they were taken off and cleaned and " put on again.

" 1136 x Q. Haven't you testified that they were never taken off after you put " them on?

" A. It is understood they were never taken off entirely and left off.

" 1137 x Q. You mean they were taken off and put back?

" A. I mean if they cleaned them they had to take them off and clean them and " put them on again.

" 1138 x Q. Do you know of their having been taken off?

" A. I couldn't say, but it is my opinion they have been taken off and cleaned.

" 1139 x Q. You never took them off, did you?

" A. No, sir.

" 1140 x Q. Do you know of anybody who did?

" A. I couldn't say.

* * * * * * * *

" 1152 x Q. Do you remember of having testified when examined as a witness: " in the McKay and Welker cases as follows: '80 x Q. What has become of that hose? " A. There are some of them there—sometimes we had to change them—take off the " old and put on the new. Q. How often did you have to change the rubber hose? " A. Not very often; only when they were in too bad condition, too dirty, why " we would have to take them out and wash them, or put on new. 87 x Q. How " often did you have to wash them? A. I should think about twice a year.'"

" A. I was of the opinion and I am of the opinion to-day, that this ought to " have been done, but I am not sure to-day that it has been done or not."

There, when his attention was called to his testimony in the Welker case, he had the audacity to say, "I was of the opinion."

What he testified to as a fact becomes a matter of opinion whenever it is necessary to relieve himself of a contradiction; and finally he admits that he gave his testimony upon the basis, not that *he* did, or knew of anyone's doing, as stated, but because he " thought it was done, and if they haven't it wasn't my fault."

Such a confession must indeed give your Honor great confidence in Meinhard's statements as to matters of fact. I venture the prediction that your Honor never before heard the like.

" 1153 x Q. You are sure, however, on the 20th day of December, 1882, that " that had been done, wasn't you?

" A. I was sure so far as I had advised our men to keep everything clean, and " it was my opinion that they had done so, but now some of those that have been " working there may say to-day that they never have done so and have neglected " their duty, and I couldn't say they have done it if they say they have not.

" 1154 x Q. Then on the former occasion you swore to a thing as a fact, based " upon the idea that you had told some of your employes to do so and so, and that " they had done so and so?

" A. Of course I thought it was done, and if they haven't it wasn't my fault.

" 1155 x Q. Did you ever tell anybody in your employ to put new rubber hose " around the beer-supply pipes?

" A. I don't recollect if I did or not, but I think it was done.

" 1156 x Q. You think now it was done, do you?

" A. Yes, sir; I think it was done.

" 1157 x Q. Haven't you testified this morning and also last evening, that new " rubber hose was never put around those beer-supply pipes?

" A. A new rubber hose? Pieces of an old one, I said.

" 1158 x Q. Haven't you testified this morning and yesterday afternoon that " you never put rubber hose around those beer-supply pipes but once?

" A. That I never did?

" 1159 x Q. Yes?

" A. I suppose so.

" 1160 x Q. Is it a fact or is it not?

" A. It is a fact that I never put any other piece on, so I guess I testified to it.
" 1161 x Q. Didn't you also testify that no one else ever put any rubber hose " around those beer-supply pipes except the once which you claim to put around?
" A. I don't know; if I said so I am sure there was no new hose ever put on; " but I don't think I said no other pieces were put on. All that was put on were " pieces of the old hose that we had.
* * * * * * * p. 380
" 1167 x Q. So far as your recollection goes, after putting the rubber pipe " around the beer-supply pipes as you claim you did, were they ever touched, taken " off for cleaning or others substituted?
" A. For my part I think they were taken off and cleaned out, but of course I " couldn't say which man or who of them, or at what time they took them out or " cleaned them, or if they cleaned them or not, but I am quite sure they ought to " have been cleaned, so as to have the water run down as the intention was
" 1168 x Q. Never mind what ought to have been done; tell me what was " done?
" A. I wasn't there all the time, so I couldn't say what was done. I am sure " those men never do what their duty is exactly.
" 1169 x Q. Why did you testify in the Welker and McKay cases, when you " knew nothing about it, that the rubber hose around the beer-supply pipes were " washed about twice a year?
" A. This ought to have been done. To-day I don't recollect if it was done or " not, and therefore I wouldn't say to-day if it was done. It possibly may have " been done and may have been neglected.

I have already called your Honor's attention to the statement contained in Meinhard's affidavit, filed in opposition to the application to re-open the Welker case, that

" The bar in the saloon was always closed on Sundays and no beer " was drawn from this apparatus during that time;" p. 53 of

and pointed out that that was a deliberate and well-considered statement, made for the purpose of having it appear that the complainant's affiants who, it was said, worked there only on Sundays, could have had no knowledge of the apparatus in question which was in the saloon, which was

" always closed on Sundays and no beer was drawn from this apparatus during " that time."

A like statement was contained in the affidavits of Albert Stief, and Gilbert, Meinhard's partner.

On his cross examination in these cases, Meinhard had to admit—as did Albert Stief—that the bar in the saloon was **always** open on Sundays and that **all** beer was drawn from this apparatus during that time.

Had it not been that Albert Stief gave this information in reply to a question whether he had ever heard any complaint about the beer drawn from the apparatus, I have no doubt Meinhard would have adhered to the statement of his affidavit, that

" The bar was always closed on Sundays and no beer was drawn from " this apparatus during that time."

As it was, the admission was only obtained from him after a pressing cross examination, which shows that he fully realized his position, and that he was determined to work out of it if possible.

Stief gave the lie to this statement of Meinhard's, when, on his direct examination, he was asked:

p. 283.

"35 Q. What did your customers say about the beer drawn from this apparatus?

"A. Well, sir, we always had a first class trade Sunday mornings in the bar-room. They always praised the beer which was drawn through this apparatus."

and made it appear most wilful, by the admissions made on his cross-examination as to the saloon being always open on Sundays and all the beer drawn from this apparatus.

As to the saloon being open on Sundays and this apparatus being used on that day were facts in respect to which Meinhard could not, as his cross examination clearly shows, have been mistaken. It was beyond the liability of mistake. If he knew anything, he must have known—as his cross examination shows he did—of the saloon being always open on Sundays, and that all the beer was drawn from that apparatus during that time. It appears that he was always there on Sundays, part of the time himself attending bar in the saloon.

When you consider the circumstances under which he made the statement in his affidavit, that

"the bar in the saloon was always closed on Sundays, and no beer was drawn from this apparatus during that time,"

and what prompted it, it certainly presents a most aggravated case of deliberate and wilful perjury.

Meinhard stands convicted upon his own confession, as does Albert Stief, who is relied upon to corroborate him in his statement as to the use of rubber hose around the beer-supply-pipes. If there were nothing more, is not that sufficient to absolutely compel your Honor to disregard their depositions—in short, dismiss them from consideration?

His Honor, Judge Wallace, said, in the telephone case referred to:

"Where a witness falsifies a fact in respect to which he cannot be presumed liable to mistake, courts are bound 'upon principles of law, morality and justice to apply the maxim, *falsus in uno, falsus in omnibus.*' The Trinidad, 7 Wheat., 283."

Judged by that rule, Meinhard's alleged anticipating apparatus, based, as it is, upon the testimony of Meinhard and Stief, must be disposed of without consideration; for have not both Meinhard and Albert Steif convicted themselves of falsifying a fact in respect to which they cannot be presumed liable to mistake? It is impossible to say that they were liable to mistake as to the saloon being always open on Sunday, and this apparatus being in use, it being the only way to get the beer for use in the saloon. It is not as if it were as to some particular day in the month or year.

or as to some exception, but as to a universal practice during a period of several years.

But your Honor will get a much better idea of the enormity of the crime by a reading of Meinhard's cross-examination bearing upon this point:

p. 335.

"511 x Q. How many kegs of beer did your lower ice-box hold?
"A. I guess there was room enough for fifty or sixty kegs.
"512 x Q. Did you usually keep it well filled?
A. Just according to the business we intended to do. On common week days we "had a small business, but on some festivals and picnics we sometimes sold a hun-"dred, and more than that."

Observe how carefully he there avoids all reference to Sundays, on which day--as subsequently shown—he did by far the largest business. Knowing this, because his account books showed it, I asked him as to Sundays:

p. 335

"513 x Q. And Sundays—that was a big day with you, wasn't it?
"A. It was sometimes.
"514 x Q. Doesn't the book which you produce here show that Sunday was "your biggest day of the week?
"A. Sometimes it was, but it wasn't the biggest, and on some occasions we "took in ten times as much as Sundays.
"515 x Q. But generally Sunday was your largest day, wasn't it?
"A. Yes, sir."

It is hardly to be presumed that he was mistaken as to the saloon being open on Sundays, when it appears that he did the largest business on Sundays. And now observe the character of his answer, when he was directly asked the question:

p. 341

"598 x Q. You kept your saloon open on Sundays, didn't you?
"A. Yes, sir; the rear hall, the concert hall."

Doesn't that show a studied effort to not only conceal the fact of the saloon being open on Sundays, but to actually lie about it? He was not asked as to the "rear hall—the concert hall," but as to the saloon, and you will observe that throughout his entire examination the "rear hall—the concert hall" has never once been termed the saloon.

He was next asked (and you will notice that my surprise at his last answer is expressed in the question):

p. 341.

"599 x Q. Didn't you keep the saloon open on Sundays?
"A. We might have had it open in the forenoon, but I am quite sure we closed "it in the afternoon when we had concerts in the rear hall."

Continuing his effort to avoid admitting that the saloon was open on Sundays, "We might have had it open!" when he well knew, as as he subsequently testifies, that it was always open on Sundays.

Observe that in his next answer he continues his effort to avoid having it appear that the saloon was always open on Sundays:

341.

"600 x Q. Didn't you always keep your saloon open on Sundays until the con-"cert started?

" A. We had concerts twice Sundays I think when we commenced with con-
" certs, and had them as long as we could make it pay.
" 601 x Q. What time did your concert open Sundays?
" A. About three o'clock in the afternoon.
" 602 x Q. And then had an evening concert?
" A. Yes, sir.
" 603 x Q. What time did that commence?
" A. At eight.
" 604 x Q. Didn't you always keep the saloon open on Sundays until the con-
" cert commenced in the evening?
" A. In the forenoon generally kept it open.
" 605 x Q. You always kept the saloon open on Sunday during the forenoon?
" A. Yes, sir."

There, after much pressing, he had to admit that he always kept the saloon open on Sundays during the forenoon; but in making that admission he uttered another falsehood, for it is established beyond question, by the testimony of Albert Stief, Meinhard's alleged bartender during all these years, that the saloon was always open on Sundays, from early morning until the opening of the evening concert. Notwithstanding which Meinhard persists in the falsehood:

" 606 x Q. Didn't you always keep it open Sundays until the evening concert?
" A. No, sir, we didn't; as a general rule we closed it right after dinner and
" then opened the hall for the concert.
" 607 x Q. That would make it about three o'clock in the afternoon when you
" closed the saloon?
" A. No, sir, opened the hall about two or half past one, and when we opened
" the hall we closed the saloon.
" 608 x Q. Didn't you open the saloon again after the afternoon concert closed
" and kept it open until the evening concert?
" A. No, sir, we did not.
" 609 x Q. Never did hat?
" A. No, sir.
" 610 x Q. Now suppose Albert Stief has testified under oath that you always
" kept the saloon open on Sundays until the opening of the evening concert; would
" you say that was the truth, or a lie?
" A. If he testified so, he was mistaken, or else it might have been done on
" single occasions; but, as a rule, I say after we closed the saloon, it wasn't opened
" again, but on single occasions it is possible it was done.
" 611 x Q. If Albert Stief, whom you have testified was with you for years, has
" testified under oath that you always kept the saloon open on Sundays until the
" opening of the evening concert, did he tell the truth or tell a lie?
" A. Then he was mistaken, I suppose."

There when he was called upon to face the statements made by Stief, he found himself in a dilemma, which made it necessary for him to either destroy Stief by denying the truth of his statements, or to endeavor to explain away the contradiction, which latter he did by saying, " It might have been done on single occasions." But Stief testifies that it was the rule, and that, as a matter of fact, the saloon was always kept open on Sundays, from morning until evening:

" 613 x Q. Did Albert Stief tell the truth, or did he not tell the truth, when he
" testified that the saloon was always open Sundays until evening?
" A. He can not testify it was always open, because he wasn't there all the
" time."

You will observe he there endeavors to crawl out of it by saying that Stief was not always there. But that is in conflict with his former testimony, and the testimony of Stief: p. 342.

"614 x Q. You have testified that the saloon was always open Sundays until " the concert hall was open at 1 or 2 o'clock?

" A. Yes, sir; as a rule, but I wouldn't say there was no exception to this.

" 615 x Q. The exceptions would be very few, wouldn't they?

" A. Perhaps some, perhaps for some time; but, as a rule, I recollect that we " always tried to close the saloon as soon as we opened the rear hall.

" 616 x Q. When the saloon was opened Sunday mornings, until the call for the " afternoon concert, your beer-drawing apparatus was used, wasn't it?

" A. I should think it was.

" 617 x Q. It was the only way in which you had to get beer in the saloon, " isn't it?

" A. Yes, sir; for the greater part of the time I guess it was."

There we have it that not only was the saloon open on Sundays, but that this beer drawing apparatus was used, and that it was the only way there was for drawing the beer which was served in the saloon on Sundays.

Next Meinhard was given an opportunity to explain away the statement made in his affidavit as to the saloon being always closed on Sundays, and a sorry mess he made of it. But again his attempted explanation is contradicted by Stief, who says that their best and largest trade was in the saloon on Sundays. Here is his explanation: p. 342.

" 618 x Q. Haven't you testified on a former occasion, that the saloon wasn't " open on Sundays?

" A. It is possible, and that I was mistaken just as Stief.

" 619 x Q. Then, if you did say under oath that the saloon was open on Sun- " days, it was untrue; is that so?

" A. Well, you might call it a lie if you please, but then it was my impression, " or else I didn't think about it; but if I say so, then our business on Sunday was " especially the concert business, and if the saloon was open it didn't amount to " anything, and so I might say it was closed on Sunday, and didn't think about " keeping it open in the forenoon; but I am sure the business didn't amount to " anything in the forenoon."

" 639 x Q. Are the statements contained in that affidavit true? p. 344

" A. Well, if I don't recollect them, I scarcely could say to-day whether true " or not.

" 640 x Q. Then you can't recollect whether you made any false statements in " that affidavit?

" A. I recollect that I tried to tell the truth just as I do to-day, and if there is " anything wrong in it it is a mistake, or I had an impression that it was so just " like this opening, if I said it was open on Sunday, I had the impression we did " no business in the front saloon, and had to attend to the rear hall to get every- " thing ready for the concerts, and it might have been for some time it was closed " and it may be it wasn't closed at all, but I never thought this would be very im- " portant if this was closed or not, especially as we have the Sunday laws, and all " ought to be closed on Sundays."

For the convenience of the Court, I quote the balance of Meinhard's cross-examination having reference to the saloon being open on Sundays and the use of his beer-drawing apparatus on that day: p. 343.

" 623 x Q. Who tended the saloon bar Sunday mornings?
" A. I am not sure about this.
" 624 x Q. Didn't Albert Stief?
" A. I suppose he tended it sometimes, and Gilbert sometimes, and it may be I " had to tend it to my dislike."
" 625 x Q. I thought you said Mr. Gilbert didn't tend bar?
" A. He sometimes had to do it. As a rule, I didn't like to be at the bar.
* * * * * * * * *
" 643 x Q. Don't you recollect that there was a reason for your saying in your " affidavit of December the 26th, 1885, that you did not keep the saloon open on " Sundays?
" A. I don't recollect that there was any reason for it.
" 644 x Q. You don't think there was any reason why you stated that?
" A. I can't see any reason for it.
" 645 x Q. Before making that affidavit, didn't you have your attention called " to certain affidavits made by Otto Schantz, Raymond Stief and others?
" A. Yes, sir.
" 646 x Q. And didn't you in your affidavit say that those boys worked for you " Sundays?
" A. Yes, sir, I guess I said many of them worked on Sundays, and that meant " Sunday afternoons.
" 647 x Q. And didn't you say as they worked for you Sundays they couldn't " have known anything of this apparatus, because the saloon wasn't open on Sun- " days?
" A. Well, I guess so, but the greater part of them had nothing to do, and only " Schantz, he was working there in the rear Sundays, like the others, except the " latter part of the term, and then he was included in the list of those boys.
" 648 x Q. During the morning, did you keep the passage from the saloon to " the garden locked?
" A. We did not.
" 649 x Q. Is this statement true, 'the bar in the saloon was always closed on " 'Sundays and no beer was drawn from this apparatus during that time.'?
" A. Well, it should read Sunday afternoons for the greater part of the time, I " suppose.
" 650 x Q. Then that statement is not true, is; that so?
" A. Well, so far. I never hap much to do in the front bar-room, and it may " be I didn't think about this front bar business at all. I might have forgotten all " about this little business that was done at the bar, if there was any.
" 651 x Q. Might you not also have forgotten about the little business of that " rubber hose over the beer supply pipes?
" A. No, sir, this was a matter we had there and could see that, and could not " forget this very easy."

Following this, he testifies that he lived at Falls Field, was there constantly, and in charge of the place—it being run under his direction—and that both he and Gilbert were always there on Sundays:

" 669 x Q. Isn't it a fact that you and Gilbert always spent your Sundays at " Falls Field?
" A. We had to be there, and both of us generally."

There you have a story which, I submit, is of itself sufficient to warrant your Honor, under the well settled rule, in entirely disregarding Meinhard's deposition; and with Meinhard's deposition out of the case, his alleged anticipating apparatus has no foundation.

There are no mitigating circumstances. It was a wilful and deliberate statement made by Meinhard with the full knowledge of

its purpose and importance, and as such was corroborated by Stief in the same language as that used in Meinhard's affidavit.

It would probably be best to in this connection refer to the statements made by Albert Stief on his cross-examination as to the saloon always being open on Sundays and as to all the beer served being drawn from this apparatus.

He said on his direct examination (~~Defts. Rec. p. 18~~): 283.

"A. Well, sir, we always had a first-class trade Sunday mornings in the bar-room; "they always praised the beer which was drawn through this apparatus."

And on his cross-examination he testified: p. 289.

"129 x Q. Now, on Sunday didn't they always draw beer in the bar-room and "take it out into the hall or garden?

"A. They did Sunday mornings, when it was not necessary to open up the "hall bar.

"130 x Q. And you always had a first-class trade Sunday mornings in the bar-"room?

"A. Yes, sir.

"131 x Q. Then Sunday mornings all this beer that supplied your first-class "trade in the bar-room was drawn through the beer-cooling apparatus?

"A. Yes, sir; as long as I have been there.

"132 x Q. At what time in the morning would you usually get there Sunday "mornings?

"A. Oh, I was always there between six and seven o'clock Sunday mornings. It "depended on how late I stayed Saturday nights; I never got there after seven.

"133 x Q. You were always there by seven o'clock Sunday mornings?

"A. Yes, sir.

"134 x Q. And how long would you remain there Sundays?

"A. I remained there Sundays until we closed up Sunday nights.

"135 x Q. And at what hour did you usually close the bar-room Sunday night?

"A. Well, the bar-room was closed at the beginning of the concert Sunday "evening; there was only one bar open—out in the hall.

"136 x Q. Then, on Sundays the bar-room was kept open until the beginning "of the concert, and then closed?

"A. Yes, to the beginning of the evening concert. During the afternoon con-"cert it was open.

"134 x Q. You was bartender, as I understand it, in the bar-room?

"A. Yes, sir; that was my main place, excepting Sunday nights, when I had "to go out and help the rest of them.

"138 x Q. But all day Sunday, and until the Sunday night concert, you were "tending bar in the bar-room?

"A. Yes, sir."

So we have it from Stief that the bar in the saloon was always open on Sundays from early morning until the beginning of the evening concert (which, as Meinhard says, was eight o'clock), during which time all the beer was drawn from this beer-drawing apparatus.

Here Stief contradicts Meinhard, who said, after being compelled to admit that the bar in the saloon was always open on Sundays, when the beer drawing apparatus was used, that it was closed after the beginning of the afternoon concert, about two or three o'clock.

Stief further says that Meinhard was usually there Sundays, helping to tend bar.

" 143 x Q. Who tended bar the most on Sundays, Meinhard or Gilbert?
" A. Meinhard.
" 144 x Q. Was Meinhard usually there every Sunday, helping to tend in the " barroom?
" A. Yes, sir; most of the time." p. 290.

All this from Stief, notwithstanding the fact that he stated in his affidavit, used in opposition to the application to re-open the Welker case:

" The bar where this apparatus was used was closed on Sundays, " and only the beer-garden was kept open."

After such a showing, may we not very properly assume that Stief's deposition, like Meinhard's, will be entirely disregarded by your Honor?

If Meinhard has not already destroyed himself to your entire satisfaction, he completed the work of destruction when he furnished a standard which will enable you to judge as to his character and the value of his statements. Here is his standard, and by that he is to be judged. Judged by it, would anyone be justified in believing him? I submit that no man entertaining such ideas of human nature is entitled to belief. Never, in all your experience, do I believe a like case has been brought to your notice. A man deliberately admitting that he does not believe a man would, or could be compelled to, tell the truth, even under oath, when his business interests are at stake. p. 364.

" 1015 x Q. Is Mr. Bartholomay a man that you would believe?
" A. I guess he could be believed.
" 1016 x Q. Would you believe him, or not?
" A. I guess I would believe him, but not in everything. As soon as his busi- " ness interests coming in contact with the truth, I guess he will be just like other " men.
" 1017 x Q. You think, then, that Mr. Bartholomay is a man of such character " that he would lie where his business interests were at stake?
" A. I am sure he would do as any other business man.
" 1018 x Q. And you think any other business man would lie when his business " interests are at stake, do you?
" A. I am sure of it.
" 1019 x Q. And that is your gauge of human nature?
" A. Yes, sir; and I only wish to except lawyers out of this: I am not quite " sure about them." p. 382-389.

* * * * * * * *

" 1176 x Q. You knew when you came here to testify, that you didn't have to " come, didn't you?
" A. I thought it would be my duty to come here.
" 1177 x Q. Why your duty to come?
" A. Because this is an action of a few against a great body of people, and I " thought it was a wrong, and therefore I thought it my duty to come here.
" 1178 x Q. Your duty to whom?
" A. My fellow citizens.
" 1179 x Q. Your fellow-barkeepers?
" A. Yes, sir; but I suppose they are citizens as well as you are.
" 1180 x Q. You would regard them as good citizens if their character is judged " by the standard you have given to-day, would you?
" A. I think they are just as good citizens as others.
" 1181 x Q. What do you think your fellow-citizens and barkeepers will say of

" you when they understand you have come on the stand and said under oath, and " said you wouldn't believe them under oath when their business is at stake?

" A. They know, as all of us, that, as soon as their business interests are at " stake, that they are not bound by law to say the truth.

" 1182 x Q. It is your understanding that, when a man's business is at stake, " he is not bound by law to tell the truth under oath, do you?

" A. I am of the opinion that, if his business interests are at stake, that he can't " be made to say all about his business. That is my understanding about it. I am " quite sure Mr. Bartholomay wouldn't tell all about his business if he was asked.

" 1183 x Q. You think Mr. Bartholomay, if he was asked about his business, " would lie about it under oath, if it was to his interest to do so, do you?

" A. I wouldn't say he would not say all about it, but it is my opinion that he " has some reason to withhold some parts of his business interests.

" 1184 x Q. And therefore he would not tell the truth under oath, on that ac- " count?

" A. I wouldn't say he would, or he wouldn't, but I think in general the busi- " ness men will not do it.

" 1185 x Q. Do you think your business character is judged, by your fellow- " citizens in Rochester by the standard you have given here?

" A. I am quite sure that my character is judged by every one in the city as " good as any one else.

" 1186 x Q. Do you think any of your fellow-citizens realize the fact that you " are a man of such a depraved character that you would swear to a lie where your " business interests were at stake?

" A. My business interests ain't at stake at all in this law-suit.

" 1187 x Q. But if your business interests were at stake in a law-suit, you " would expect to lie if it was necessary, wouldn't you?

" A. I guess I wouldn't.

" 1188 x Q. Haven't you said that, when your business interests were at stake, " you would be justified in saying that which wasn't the truth?

" A. I haven't said so.

" 1189 x Q. What have you said on that score?

" A. I have said that, as a general rule, people, where their business interests " are at stake, don't say the truth, and that is all I have said; but I never have said " I would do so.

" 1190 x Q. Aren't you one of the people?

" A. Yes, sir, that is so; but, as I said before, lawyers are to be excepted, and " I suppose I might be excepted just as well.

" 1191 x Q. Didn't you say within the last half-hour that you considered your- " self as coming within the rule which you have laid down for your fellow-citi- " zens?

" A. I guess I said I would do the best for them, but I never intended to say I " would say a lie for them and have no reason to do so.

" 1192 x Q. I ask what you would do for yourself?

" A. For myself I would do nothing in this case at all."

I started with the intention of destroying Meinhard with his own testimony.

Have I not succeeded? Can anyone read his testimony in these cases and in the Welker case without coming to that conclusion? To me, such a thing is impossible. Not only is a reasonable doubt created by his own testimony as to the existence of his alleged anticipating apparatus, but the mind is impressed with the positive conviction that such an apparatus never existed.

The alleged corroborative proofs are of little consequence if Meinhard has been convicted—as I submit he has—of intentionally falsifying facts; not only one fact, but as to every fact asserted about his alleged anticipating apparatus other than the fact as to its having been originally put in by Neuhart.

Said Judge Wallace in the Telephone case, when speaking of Drawbaugh and the alleged corroborative proofs:

"In order to ascertain what effect is to be given to the corroborative proofs, it "is important to determine whether Drawbaugh is an honest witness, or whether "he has intentionally falsified collateral facts, and is therefore to be deemed dis- "credited."

It is for your Honor to say if Meinhard has proved himself to be an "honest witness." If he has not, then I submit that the alleged corroborative proofs are of no consequence. But the so-called corroborative proofs fail to corroborate. Had Meinhard's story been consistent throughout, it would have been destroyed by the alleged corroborating witnesses, for they are conflicting throughout, both as between themselves, and between themselves and Meinhard.

Albert Stief's story on his direct examination, is that he was employed by Meinhard as bar-tender—

"When I started in I was tending bar for him and working off and on;"—

although at that time he was only fourteen years old.

"When I first went there" (Meinhard's) "he drew beer from the wood,"

but afterwards he put into his saloon a beer-drawing apparatus, which, as he says, remained there in use during all the time he worked there.

He described the apparatus—in which he says no change was ever made, to his knowledge—as follows:

"25 Q. Please describe the apparatus as near as you can?
"A. The upper ice-box had three faucets; there were little lead pipes that run "from the faucets through the tin pipes about an inch in circumference; these tin "pipes extended about four inches above the bottom of the upper ice-box, and "about four or five inches below the upper ice-box floor; there was a rubber hose "connected on to these tin pipes; these rubber hose went down through to the "lower ice-box into the corner of the lower ice-box; you could see the rubber hose "about one and one-half or two inches in the lower ice-box; these small lead pipes "ran down to the bottom of the lower ice-box, so that we could use them to tap "beer; these lead pipes were fastened to the beer kegs by couplings coupled on to "the brass faucet; that was drove into the keg."

And here commences his chapter of mistakes, if the apparatus was as Meinhard testifies; mistakes which show that Stief either knew nothing whatever about the apparatus, or has testified falsely.

Speaking of the tin pipes in the bottom of the upper ice-box, he says that they extended "about four inches above" and "about four or "five inches below" the bottom of the upper ice-box. In his affidavit he said about four inches above and eight inches below; while Meinhard says they only extended two inches below.

According to Stief's description, the beer-supply-pipes ran from the faucets in the saloon to the faucets in the kegs in the cellar, where they

"were fastened to the beer kegs by couplings coupled onto the faucets that was "drove into the kegs."

No mention whatever of either straight pipes or coils, with brass

couplings on each end, connecting the beer-supply pipes to the faucets in the upper ice-box, as stated by Meinhard and other withesses; but a positive statement that the beer-supply pipes ran directly from the faucets in the upper ice box to the faucets in the lower ice-box, to which they were directly connected by couplings when Meinhard says (and his drawing, Defendants' Exhibit Meinhard A, shows) that the beer supply-pipes did not come within three feet of the faucets in the kegs in the cellar,—the ends of the supply-pipes being connected to the faucets in the kegs by a separate piece of rubber hose three feet long: (Meinhard's deposition)

" 370 x Q. And each beer-supply pipe had its piece of rubber pipe wired on to
" the end of the beer-supply pin, and coupled onto the faucet of the keg?
" A. Yes, sir."

If Stief knew anything about this apparatus, he must have known of those rubber connections, especially as it was a part of his daily duties to tap the kegs in the cellar; yet, according to his description of the apparatus, there was nothing of the kind there.

What is his recollection worth, if he does not remember the rubber connections between the beer supply-pipes and the faucets —assuming that they were there as Meinhard says,—which of necessity he had to handle every time he removed the faucets from the empty kegs and tapped fresh kegs of beer. Is it reasonable to suppose that his recollection would be any better as to other parts of the apparatus, which did not come daily under his eyes, as did these rubber connections? He describes the apparatus as having rubber hose around the beer supply-pipes extending from the upper to the lower ice-box; fastened at one end by being slipped over the tin pipes projecting from the bottom of the upper ice-box and the other end projecting into the lower ice-box " about one and a half or two inches " (in his affidavit he said that they ran down and into the lower ice box about eight inches),—and such is his description of the apparatus as it was constructed, and continued in use, for he says he was there when it was constructed, and that no change was ever made in the apparatus to his knowledge. Yet Meinhard admits that there was no rubber hose around the beer supply-pipes from the upper to the lower ice-box, as the apparatus was constructed, nor for several months later, when he placed them there as an addition.

Is not this a most convincing demonstration as to Stief's utter ignorance of the apparatus, and that no reliance can be placed in any statement that he makes? It certainly is in direct conflict with the testimony of Meinhard.

Meinhard opened at Falls Field in June, 1876, and Stief, on cross-examination, says, that he went with Meinhard—

" (103 Q.) A. I don't remember the year, but when he opened up; not exactly
" the first day, but soon after, perhaps a few months, I mean when he opened up
" Falls Field."

that he was there when the apparatus was constructed and saw

it as soon as completed, and that it was then as described by him on his direct-examination in answer to the 25th interrogatory, and that no change was, to his knowledge, ever made in the apparatus:

" 165 x Q. Were you at Meinhard's when the beer-cooling apparatus was put " in?
" A. Yes, sir.
* * * * * * * *
" 171 x Q. You saw that apparatus, didn't you, as soon as it was completed?
" A. Yes, sir,
" 172 x Q. Now, as you first saw that apparatus, was it precisely as you have " described in your direct examination?
" A. As near as I can remember.
" 173 x Q. Do you know of any change ever having been made in that apprra- " tus?
" A. No, sir, I do not."

Including in his description of the apparatus, as first constructed, the rubber hose surrounding the beer supply-pipes, which confessedly were not there; and if not there then, so far as Stief is concerned, they never were there, for he says no change was made, and later on says that he knows of no change or addition having been made by Meinhard.

" 176 x Q. Did Meinhard have anything to do with putting this apparatus in?
" A. I don't remember.
" 177 x Q. You don't know, do you, of Meinhard's having done anything about " that apparatus?
" A. I don't remember.
" 178 x Q. If he did do anything, you didn't see or know of his doing it, did " you?
" A. Not to my knowledge or remembrance."

Stief's assumed knowledge of rubber hose around the beer-supply pipes, from the upper to the lower ice-box, is based upon his understanding that they were in the apparatus as originally constructed, and to make certain that he so intended it, he was again asked:

" 193 x Q. Then you remember this rubber hose as being a part of the appara- " tus as originally put in, do you?
" A. Yes, sir.
* * * * * * * *
" 200 x Q. When this beer-cooling apparatus was first used at Meinhard's, did " the water pass down through this rubber hose into the lower ice-box?
" A. Yes, sir, as near as I can remember.
" 201 x Q. You don't remember or know of the water from the upper ice-box " having gone anywhere else, do you?
" A. No, sir.
* * * * * * * *
" 203 x Q. Do you remember the drip pipe that was to the upper ice-box?
" A. The only drip pipes I knew were the rubber pipes."

After such statements, of what value is Stief's testimony? Instead of corroborating, does he not contradict Meinhard's?

It is hardly to be supposed that the Court will give any credence

to any statement Steif may make as to the apparatus, when there is no pretence that the apparatus, as originally constructed, contained rubber hose around the beer supply-pipes.

The only conclusion to be drawn from Stief's testimony is that he knew nothing whatever of the apparatus, yet was willing to loan himself in an attempt to corroborate Meinhard, but found himself unable to tell the story as it was given to him. Being impressed, however, with the importance of having it appear that the beer supply-pipes were surrounded with rubber hose, he made the fatal mistake of describing the apparatus as having been thus constructed originally.

In every respect, other than the mere fact that the beer supply-pipes were covered with rubber hose, Stief's description and recollection of the apparatus are in direct conflict with those of Meinhard.

Is it not most remarkable, that he should have such a distinct recollection of the rubber hose surrounding the beer-supply-pipes, which, according to the statement contained in his affidavit "could not be seen except by a careful inspection, as they were out of sight"—and to which his attention appears never to have been called—and have no recollection of the rubber hose connecting the beer-supply-pipes to the keg faucets, which, if his testimony is to be believed, he must have handled daily when tapping kegs of beer?

Stief admits that he gave his affidavit in opposition to the application to re-open the Welker case at the request of Mr. Meinhard, and that Meinhard accompanied him to the Solictor's office for that purpose.

Stief says: R. 296

"237 x Q. Didn't you, before giving your affidavit of December 10, 1885, have "a talk with Meinhard about the apparatus about which you have been testifying "to-day?

"A. All the talk we had, he asked me if I remembered anything about it, and "I told him yes.

"238 x Q. Then you did have a talk with Meinhard before giving this affidavit "of December 10, 1885, didn't you?

"A. That was all the talk we had.

"239 x Q. Where did you have this talk with Meinhard?

"A. He called me into his place as I was going by to dinner.

"240 x Q. And then it was that he asked you if you remembered anything "about this apparatus, was it?

"A. Yes, sir.

"241 x Q. Didn't he then say that he wanted you to make an affidavit as to "what you knew about his apparatus?

"A. Yes, sir.

"242 x Q. Where was it that you made that affidavit of December 10, 1885?

"A. In Mr. Sullivan's office.

"243 x Q. Did Mr. Meinhard come down to Mr. Sullivan's office with you?

"A. Yes, sir."

Although Meinhard denies that he ever asked Stief to do a thing or not to do it: R. 376

"1102 x Q. Didn't you request Albert Stief not to give an affidavit to Mr. "Magin?

"A. I didn't do this and never asked him to do a thing or not to do it."

Of the two, Stief's statement is undoubtedly the true one.

An effort was made on Steif's re-direct examination to have him deny these statements, by Mr. Sullivan asking him: p. 300

"292 Re-D. Q. Are you certain as to Mr. Meinhard's coming with you to our "office at the time you made this affidavit of December 10th, 1885?"

But he would not deny them, his answer being: Yes, sir, I am quite sure."

Although Meinhard was examined after Stief, his attention was not called to those statements, nor was he asked to affirm or deny them, other than the above quoted question and answer from his cross examination.

Furthermore, it appears (x Q. 306) that Meinhard was in conversation with Stief during Steif's examination.

Stief is endeavoring to discredit his brother Raymond, stated in his affidavit that "he"—his brother Raymond— p. 530

"was employed as waiter boy to work on Sunday in the beer-garden to help out "on pic-nics and parties given there, and had nothing to do with the bar where "this apparatus was used except for a week or two; during this time he helped "off and on about the bar."

But on his cross examination in these cases he had to admit that his brother Raymond attended bar for Meinhard, during which time he used the apparatus in question.

Were it profitable to continue the comparison between the statements of his affidavit and the statements of his examination in these cases, you would find that they are throughout in direct conflict.

Who do we find this Alfred Stief to be?

According to his own testimony, he is and has been a bartender since he was fourteen years old, and at the time of giving his deposition was in the employ of one Dorr, a member of the Saloon Keepers' Association, which is conducting the defence in these cases. That of itself is sufficient to justify your Honor in subjecting his statements to the closest scrutiny.

What need is there of continuing the discussion as to Stief, when he appears as a self confessed perjurer, having deliberately sworn in his affidavit that "The bar where this apparatus was used was "closed on Sundays, and only the beer garden was kept open;" and on his cross-examination in these cases admits, without the least hesitation, that the bar where this apparatus was used was always open on Sundays from early morning until evening, during which time this apparatus was not only in use, but all the beer served was drawn from it.

Such is the alleged corroborating testimony of Albert Stief.

To hold that an anticipation is established by the testimony of Meinhard and Albert Stief would be to disregard the well-settled rule of law. It would be to establish a new rule, placing the burden upon the complainant, and giving the benefit of the doubt to the defendant.

Nor is the testimony of Meinhard and Albert Stief strengthened by the other alleged corroborative witnesses of the defendants.

Barr, a plumber, examined by the defendants in corroboation of Meinhard, says, that he made repairs upon Meinhard's beer-drawing apparatus—(Ques. 7): R. 386-389.

"A. I couldn't remember the exact date; sometime in 1877 or 1878; that—(Ques. 8) "one of the tin-lined pipes coming down from the upper box "to the lower box was broken, and I soldered it together; and he thinks he repaired two of them pipes, although in his affidavit, he said —"I repaired three of these lead pipes." The repairing which he did to these pipes was in the lower ice-box.

"14 Q. What part of this apparatus did you repair?
"A. The pipes in the lower box.
"16 Q. And what did you do on those pipes?
"A. I soldered the pipes together, they became broke."

It was while soldering these beer supply-pipes in the lower ice-box he says that he examined the construction of the apparatus, which was the first and last he had to do with it: R. 408.

"384 x Q. And that I understand you was the first and last time you ever re-"paired this Meinhard apparatus?
"A. Yes, sir."

In describing the apparatus as he found it on the occasion of his examination when soldering the beer-supply pipes in the lower ice-box some time in 1877 or 1878, he says: "I think there was three or four" beer supply pipes, and that these beer-supply pipes were fastened to the kegs in the cellar. (Ques. 18): "I think they had a piece of rubber hose connected with the tin-lined pipe to the "faucet to the barrel cock;" (Ques. 20) "there was coils of pipe inside the upper "ice-box and I had to take one of them out to repair them;" that the water in the upper ice-box (Ques. 23) "dripped through the pipes outside these "beer-supply pipes into the big ice-box downstairs." But he does not remember what kind of pipes these outside pipes were, nor the size of them. He does remember, however, that they were soldered into the bottom of the upper ice-box, and that they extended above the bottom (Ques. 29) "not very far * * * " (30) "there wasn't "half an inch to the best of my recollection;" and that they extended below the bottom of the upper ice-box (Ques. 33) "I don't think over four "or six inches." R. 597

In his affidavit, which was prepared for him by others, he had a very distinct recollection of everything, and especially did he remember that the beer-supply pipes "entered the bottom of the upper ice-"box through tin pipes about twelve inches long and an inch in diameter, which "tin pipes were tightly soldered into the bottom of the upper ice-box and projected "three or four inches above and about eight inches below the bottom of the upper "ice-box. There were three of those tin pipes in the bottom of the upper ice-box;" and that "the only way for the water to pass out of the upper ice-box was through "these tin pipes." Which recollection accorded very closely indeed with Meinhard's recollection; though this is not surprising when you consider—as is the fact—that the affidavit was prepared for

him, and taken to him to sign, when, as he says, "I swore to it that I "made the repairs on it if I can recollect it right."

The drafter of the affidavit knew what was wanted to corroborate Meinhard, and drew the affidavit accordingly, which accounts for Barr's knowledge then and his ignorance when examined in these cases.

Notwithstanding his assumed knowledge of the apparatus, as testified to in these cases, when he was asked—

"13 Q. Please look at this model and state how that compares with the appara-"tus which you repaired for Gilbert & Meinhard?"

his reply was

"I don't know; it don't look much like it, because you couldn't see the whole "thing as that shows it there."

After that, is the Court likely to pay much attention to any statement he makes in reference to this apparatus?

Couldn't even recognize a model of the apparatus when shown to him. "It don't look much like it." And if the description which he gives of the apparatus throughout his cross-examination is correct, it not only didn't look much like it, but had no resemblance to it.

Having in the fore part of his direct examination, when describing the Meinhard apparatus, omitted to make any mention of the rubber hose surrounding the beer-supply pipes, he was asked:

"36 Q. Was there anything outside of those pipes that were fastened into the "bottom of the upper ice-box?
"A. Not as I know of, no, sir. I am not sure whether there is or not.
"37 Q. Was there anything fastened to the lower end of those tin pipes?
"A. No, sir."

Nothing fastened to the lower end of the tin pipe projecting from the bottom of the upper ice-box. The very feature which, of all others, he would be most likely to recollect, if there, and the presence of which is necessary to convert the Meinhard into the Gordon apparatus, he says was not there.

Immediately following, the suggestion is made to him:

"38 Q. How would the water pass out of the upper ice-box into the lower ice-"box?"

When it occurring to him that he had said that the water did pass out from the upper to the lower ice box, and therefore there must have been some connection between the upper and the lower ice-box, he makes the random answer:

"A. Flowing through these outside conduct pipes and following down the "beer pipes. I know the pipes were all slimy."

Counsel feeling secure with that answer then asked:

"39 Q. What were those outside conductor pipes made of?"

When he made the fatal answer:

" A. I don't know whether they were wrought iron or tin, but they were metal " of some kind I am pretty sure."

" Wrought iron or tin or metal of some kind!" When there is no pretence that there was any such outside-conductor leading from the upper to the lower ice-box. Either the beer-supply-pipes were surrounded with rubber hose or were bare, according to Meinhard's own admissions.

After that fatal answer, a desperate effort was made to have him testify as to the use of rubber hose around the beer-supply-pipes, and he was asked the following leading questions : f. 388.

" 41 Q. Was there any rubber pipe attached to the tin or metal pipe?
" A. I am sure I couldn't say.
" 42 Q. While in this lower ice box, did you notice the ends of the rubber pipe " which covered the supply pipes?
" A. I don't know whether they were rubber or what they were. They were " open, whatever they were made of. May I ask you a question? Where the " question was asked me where the pipe into the upper ice box, what it was?
" 43 Q. And you said it was tin or metal?
" A. Yes, I said it was tin or metal, or some metal.
" 44. Q. Go right on?
" A. From that connection down there I don't know whether it was hose or " what it was. I know it was an open end, to the best of my recollection."

Although he shows a very willing disposition to help counsel out of the difficulty, the best he could do was—

"I don't know whether it was hose or what it was,"

having previously stated in the most positive manner that they were wrought iron, tin or some kind of metal.

When we come to his cross-examination, you will find that he adheres to the story that they were metal pipes, and not only that, but that each pipe was encased in a wooden box, as he knows, because he had to open the wooden cases and cut the metal pipes so as to reach the beer supply pipes.

Upon such a showing, may we not assume that Barr's testimony is out of the case?

His direct examination concludes with an effort to make it appear—at least such I take it was the purpose—that he had no opportunity of knowing with what, if anything, the beer supply-pipes were covered. He was asked : f. 389

" 47 Q. Did you look into the lower part of the upper ice-box?
" A. No, sir; I don't think there was a box there at all.
" 48 Q. Did you look into this cupboard below the ice-box?
" A. No, sir.
" 49 Q. From the appearance of the lower end of those pipes which covered the " supply-pipes, of what kind of material would you say they were made?
" A. I couldn't say.
" 50 Q. How far did they run into the lower ice-box?
" A. Which pipe do you mean, the beer pipe?
" 52 Q. The pipes that covered the beer pipes?
" A. Between four and six inches."

If he did not look into the cupboard below the ice box, how then did he know that the tin pipes, which he says were soldered

in the bottom of the upper ice-box, projected from four to six inches below the bottom of the upper ice-box, and that onto those projecting ends were fastened conductors of wrought iron, tin or other metal surrounding the beer supply pipes from the bottom of the upper ice-box down into the lower ice-box.

Yet he deliberately swore that they did—when that could only be determined by a close inspection of the pipes in the closet underneath the upper ice-box.

I submit that that admission, in view of his previous statements, absolutely destroys him beyond the possibility of placing credence in any statement he makes.

A reading of his cross-examination will confirm all that I have said as to this witness.

Having stated that he did not look into the closet beneath the upper ice-box, I asked him on cross-examination : p. 390.

" 62 x Q. How do you know that the water did not pass into buckets placed on " the floor of that closet ?

" A. Well, I don't know, only I can judge ; I pulled one pipe out from the " cellar and fixed it, and put it down again, and that is all, out of that tube or " pipe."

So that he does not know what did become of the water in the upper ice-box ; whether it went into pails in the closet underneath, as Meinhard would have you believe it did originally, or into the lower ice-box.

Then when he stated on his direct examination that the water went from the upper to the lower ice box, was it not simply a piece of guessing on his part ? Certainly he had no actual knowledge.

As I have already pointed out, he says on his cross-examination, that some two years after making these repairs—which would be 1879 or 1880—he put in a soda-water apparatus, the pipe of which leading from the fountain in the cellar to the saloon passed through the upper ice box ; and in putting it in he observed that the coils were still in the bottom of the upper ice box ; while Meinhard and Cassebeer would have you believe that they were removed in September, 1878. But at that time Barr did not examine the beer-drawing apparatus ; so that his entire knowledge of it rests upon the examination he made when he repaired the beer-supply-pipes in 1877 or 1878.

p. 392.

" 90 x Q. At that time did you examine this beer-cooling apparatus ?

" A. No, sir, not to examine it ; I had to take the ice all out of the upper ice " box to put the coil in.

" 91 x Q. To put the coil of the soda water pipe in ?

" A. Yes, sir.

" 92 x Q. What was in that ice-box when you took the ice out to put the coil " of soda water pipe in ?

" A. There was coils of beer pipe."

Is it reasonable to suppose that Barr, or any other man, having casually examined that apparatus on one occasion, could ten

years thereafter remember its exact construction and arrangement?

His testimony, boiled down, amounts to nothing more than the naked statement that he soldered the beer supply-pipes in the lower ice box, and he admits that that is about the extent of his recollection.

h. 393.

"119 x Q. Of what part of the matters you have been testifying to have you "a very distinct recollection?

"A. I recollect fixing beer pipes down in that ice-box.

* * * * * * * h. 394

"134 x Q. Then is it not a fact that your knowledge of the Meinhard beer-"cooling apparatus is limited to what you acquired at the time you repaired the "beer-supply pipes in the lower ice-box?

"A. I don't understand you?

"135 x Q. (Question repeated.)

"A. Yes, sir."

When asked what was the matter with the beer-supply-pipes, that he had to solder them, he said (Cross Ques. 158):

h. 401.

"A. There was one of them where they hooked up was an iron hook, and "moving it backward and forward cut the metal."

As Meinhard describes the beer-supply-pipes, they were in no way hooked up, nor is there any hooking up, or necessity for hooking up shown in the drawing "Defendants' Exhibit Meinhard A."

As to the other pipe he was asked:

h. 401

"259 x Q. And how was it with the other pipe?

"A. I think the barrel, or both of them, one was broke close to the ceiling, and "close so we couldn't fix it and had to pull it up to fix it."

Now, if this other pipe was broken "close to the ceiling" and he had to solder it there, he would have come in direct contact with the rubber hose, if they were around the beer supply-pipes as Meinhard claims; and yet he has no recollection of them. He even says it was broken so close to the ceiling that he had to take the beer supply-pipe out in order to mend it, in doing which he says he had to open a wooden box and metal pipe, both of which surrounded the beer supply-pipe which he mended.

In endeavoring to have him locate the points at which he soldered the beer-supply-pipes, he testified:

h. 401.

"226 x Q. Where was the leak in this pipe that you mended in the lower cellar, "about what portion of the pipe?

"A. As the pipe came down and fastened on the ceiling of the box and a hook "on it, and the weight of that on it broke it."

Clearly indicating that the beer-supply-pipe was fastened with hooks on to the ceiling of the lower ice-box; again showing his ignorance of the apparatus.

h. 401.

"267 x Q. That pipe leaked somewhere near the keg?

"A. No, sir; that leaked near the top and there was one run further over and

" that leaked further over, where I could bend it down and fix it in the ice-box,
" and the other was so short I couldn't get my soldering iron up.
" 268 x Q. So one leaked up near the ceiling of the ice-box?
" A. Yes, sir.
" 269 x Q. And the other further down?
" A. Yes, sir."

Although he has described the course of the beer-supply-pipes from the upper to the lower ice-box, he had to admit that he did not know how they ran: h. 402.

" 286 x Q. They ran first down?
" A. Yes, sir.
" 287 x Q. How do you know that, when you told me a moment ago that you
" hadn't looked into the closet underneath the ice-box?
" A. They couldn't run up from that. My own judgment tells me that.
" A. Not positive, no, sir.
" 288 x Q. What part of the cellar was the lower ice-box in?
" A. It was in the southwest corner."

Nothing could better illustrate Barr's ignorance of the Meinhard apparatus than his failure to locate the lower ice-box, in which he says he worked. One would suppose that if he recollected anything he would recollect the location of this lower ice-box. Yet he says it was about in the center of the cellar, and not in the corner as Meinhard testified (Meinhard's deposition, p. ~~78~~):

" 288 x Q. Do you know whether the beer-supply pipes ran down through the
" closet underneath the upper ice-box?

and as to which there can be no dispute, it being so testified to by all the witnesses save Barr.

Barr's testimony upon this point is as follows: h. 405.

" 342 x Q. What part of the cellar was this lower ice-box in?
" A. Well, it is in about the center of the old part asn ear as you can get at it.
" 343 x Q. It was about the center of the old cellar?
" A. Yes, sir.
" 344 x Q. It wasn't off one side or in the corner?
" A. No, sir; it was nearer to the river than to the front.
" 345 x Q. But to your best recollection about midway?
" A. Yes, sir; it may be further north than south of the old building."

But Barr does not even remember the wine cellar which adjoined the low ice-box: h. 406.

" 348 x Q. You don't remember, then, a wine cellar that adjoined this ice-box?
" A. No, sir."

He is equally at fault in his recollection as to the opening into the lower ice-box, through which the beer supply pipes passed, as he says the opening was on "the river side," whereas Meinhard says it was in front and at the corner near the wine cellar, which was the side opposite to the river side. It could not have been the river side, for the wall, which formed a side of the box, was on the river side. (Barr's testimony, ~~p. 204~~):

" 551 x Q. Was this opening in the side of the lower ice-box through which " the beer-supply pipes went, at one side, or about the center of the box?
" A. It was at one side.
" 552 x Q. Nearer the wall, or nearer the front of the ice-box?
" A. Nearer the river, on the river side.
" 553 x Q. The river was west of the apparatus, wasn't it?
" A. Yes, sir."

h. 419.

Remarkable as are the discrepancies already pointed out, and which would be sufficient to discredit anyone, they are nothing as compared with the further statements made on his cross-examination as regards the pipes surrounding the beer supply-pipes. Of them he testifies:

h. 406.

" 354 x Q. Were they out so that you could see them as you went into the " cellar?
" A. They were boxed up I think.
" 355 x Q. How boxed up?
" A. Boxed and a regular square box made of it.
" 355 x Q. There was a square wooden box?
" A. Yes, sir.
" 356 x Q. Through which these beer-supply pipes passed?
" A. Yes, sir.
* * * * * * * *
" 358 x Q. You tore part of the wooden pipe off, did you?
" A. Yes, sir.
" 359 x Q. And the beer-supply pipes as they came out of the lower ice-box " went into this wooden pipe up to the upper ice-box?
" A. Went through this metal pipe and the metal pipe was insulated with this " box.
" 360 x Q. This wooden box?
" A. Yes, sir.
" 361 x Q. How large was this wooden box?
" A. I don't know.
" 362 x Q. Square box, was it?
" A. Yes, sir.
" 363 x Q. A foot in diameter?
" A. No, sir.
" 364 x Q. Six inches in diameter?
" A. Each had a separate box, to the best of my recollection.
" 365 x Q. Each pipe had a separate wooden box?
" A Yes, sir.
" 366 x Q. And how many of these wooden boxes were there?
" A. There was either three or four of them.
" 367 x Q. And you tore off part of this wooden box to see the pipe as they " passed out of the lower ice-box?
" A. Yes, sir, to see the covering pipe.
" 368 x Q. What did you want to see the covering pipe for?
" A. I had to take it apart.
" 369 x Q. And that is the way you know it was a metal-covering pipe?
" A. Yes, sir, that is why I think it was. That is my recollection.
" 370 x Q. Did you solder up this metal pipe after you tore it apart?
" A. No, sir.
" 371 x Q. You didn't take that trouble?
" A. No, sir.
" 372 x Q. Did you take the trouble to fix up the wooden pipe?
" A. Yes, sir.
" 373 x Q. Just simply closed that up without closing up the metal pipe?
" A. I closed the metal pipe up.
" 375 x Q. You closed it?
" A. Yes, sir.
" 376 x Q. How did you fix it?

" A. With a slip joint.
" 377 x Q. Had you cut it off or cut it down lengthwise?
" A. No, sir; it was put together with a slip joint.
" 378 x Q. How much larger was this metal pipe that was put together with a " slip joint than the beer-supply pipe which passed through it?
" A. The area?
" 379 x Q. Yes?
" A. The area was about six or eight times larger and the diameter was about " three times.
" 380 x Q. And how much larger was the wooden box?
" A. Oh, it was about four inches.
" 381 x Q. Than the outside metal pipe that was joined together with a slip " joint?
" A. Yes, sir; and maybe it would be five inches.
" 382 x Q. Did this wooden box contain anything besides the beer-supply pipe " and the outer metal pipe joined together with the slip joint?
" A. No, sir."

Certainly remarkable testimony, coming from one who claims sufficient knowledge of the apparatus to recollect the small tin pipes in the bottom of the upper ice-box, and considering that Meinhard says the beer supply-pipes were surrounded with rubber hose.

Not an atom of truth in all those statements of Barr, if Meinhard's statement that the beer supply-pipes were surrounded with rubber hose is true.

Surely Barr there drew very heavily upon his imagination, or else he was testifying as to infringing apparatuses, some fifty of which he had put in since the date of the Gordon patent.

There can be no dispute about the fact that Meinhard and Barr have related conflicting stories as to the pipes surrounding the beer supply-pipes.

With Meinhard's story you are familiar.

Bar's story, as related in the testimony just quoted, is that the beer supply-pipes, in passing from the upper to the lower ice-box, passed through " metal pipe, and the metal pipe was insulated with this box;" that is, enclosed in a square wooden box, and of this he is certain, because he tore off a part of the wooden box and took out a piece of the metal pipe, in order to get at the beer supply-pipe; that each beer supply pipe had a separate metal pipe and a separate wooden box, the diameter of the metal pipe being about three times as large as the diameter of the beer supply-pipe passing through it; that his opening of the woeden box was not simply a matter of curiosity, but he had to open it to take apart the metal pipe, so as to reach the beer supply-pipe. That after repairing the beer-supply pipe he closed up the metal pipe with a slip joint, as the metal pipe " was put together with a slip joint;" and that the wooden box contained nothing but the beer-supply-pipe and the metal pipes surrounding them.

What a story; is it possible that after that you can be asked to believe any statement made by Barr in reference to this Meinhard apparatus? With the story before you, is further comment upon Barr's testimony necessary?

In another part of the cross-examination, he adds to that story by saying that the tin pipes in the bottom of the upper ice-box projected down into the lower ice-box, and he knows that because he saw one end in the box (upper ice-box) and the other end in the ice-box (lower ice-box): R. 403.

" 303 x Q. You don't know where those tin pipes went to, do you?
" A. Into the lower ice-box.
" 304 x Q. How do you know that?
" A. Well, I know it. I saw one end in the box, and the other end in the ice-
" box.
" 305 x Q. In the lower ice-box you saw the end of the tin pipe, did you?
" A. Yes, sir.
" 306 x Q. You distinctly remember that, do you?
" A. I didn't say tin pipe, but of the pipes.
" 307 x Q. What were those pipes?
" A. I couldn't say.
" 308 x Q. Were they metal pipes?
" A. I think they was. They might have been galvanized iron pipes. I
" don't think they were rubber.
" 309 x Q. You don't think they were rubber?
" A. No. sir.
" 310 x Q. You think they were metal of some kind?
" A. Yes, sir.
" 311 x Q. Quite certain of that?
" A. Yes, sir; pretty sure."

Barr admits that he knew of the pendency of the former cases against Welker and McKay, and contributed towards the defense of those cases: R. 397.

" 190 Q. Have you contributed anything towards the defense of the Magin
" patent?
" Yes, sir;"

and that although he then knew as much about the Meinhard apparatus as he did when examined in these cases, and knew that it was important to establish in those cases the existence of the Meinhard apparatus as claimed by Meinhard, yet not a word from him as to any knowledge of that apparatus.

Is such a course consistent with the knowledge which he now claims to have of the apparatus?

Is it not contrary to all laws of human nature, that a man, situated as Barr admits he was, interested sufficiently to justify him in contributing towards the defense—himself an infringer and having guaranteed to protect parties for whom he had put in the infringing apparatus— R. 397.

" 194 x Q. Why did you contribute towards the defense of the Magin patent?
" A. Because we guaranteed to some of the people that we would stand the
" cost?
" 195 x Q. That is, you guaranteed some parties for whom you had put in a beer drawing and cooling apparatus that you would stand between them and the Gordon patent owned by Magin?
" A. Yes, sir."

should have kept silent, when by speaking in corroboration of

Meinhard he could have aided the defense in a most substantial manner and at the same time serve his own interests?

Barr admits having seen and examined the Gordon apparatus certainly as early as the year 1879—probably the first Gordon apparatus put in—and that since then he has been perfectly familiar with the construction and operation of the Gordon apparatus, having himself shortly thereafter become an infringer, until at the time of giving his testimony he owned to the construction of "perhaps fifty" apparatuses: R. 396.

"177 x Q. When did you first put an apparatus in, that was similar to Gor-
"don's?
"A. I couldn't say, I am sure.
"178 x Q. How many have you put in that were similar to the Gordon?
"A. Oh, perhaps fifty.
* * * * * * * *
"180 x Q. Can you give me an idea as to the year when you put the first
"one in?
"A. Put in the first one in 1880 I think.
"181 x Q. And that was after you had seen the Gordon apparatus, wasn't it?
"A. Yes, sir."

Thus clearly showing his interest, and the motive prompting him to swear falsely in endeavoring to bolster up Meinhard.

Defendant's counsel, in speaking of Barr's testimony as to the pipes surrounding the beer-supply pipes, says that,

"On his cross examination, which was tedious and exhaustive, he got the con-
"struction of parts of this apparatus confounded with one of the many apparatuses
"he has put in."

If that be so, is it not likely that his entire testimony is based upon one of the many apparatuses he has put in, which he admits were all similar to and patterned after Gordon's.

The true explanation is, that he was unable to carry the lie, and got himself so entangled that the result was his own destruction.

Cassebeer, another plumber, examined for the defendants, made as bad a showing as did Barr. He is the plumber who Meinhard said removed the coils from the bottom of the upper ice-box.

Cassebeer testifies that he did some work for Meinhard about his beer-drawing apparatus (6 Q.): "I guess 1876 or somewhere around there, or 1877;" In his affidavit he said, "In the spring or summer of 1878."

The work was the removal of coils from the upper ice-box, which he did without the assistance of anyone: R. 421.

"10 Q. Did any person assist you in doing that work?
"A. No, sir; I done it myself."

It was while doing that work, he says, that he examined (11 Q.): "Just that part" (of the apparatus) "where I worked on," —his work being confined to the upper ice-box. That was the only time he ever worked upon that apparatus, and his knowledge of it is such as he derived from that one examination, and his testimony is his recollection of the apparatus upon his knowledge thus acquired:

"37 Q. Is that the only time you ever repaired this apparatus?
"A. Yes, sir; that is the only time. L. 423.
* * * * * * *
"200 x Q. Have you ever worked on the apparatus before or since?
"A. No, sir."
L. 432.

He says, in speaking of the apparatus, that there were three "tubes" in the bottom of the upper ice box, "must have been three-"quarters of an inch, or somewhere along there," through which the beer supply pipes of "about three-eighths of an inch outside," diameter passed; that those tubes were "made out of tin or zinc," and

"were just short tubes to go from the top ice-box through, and then there was "a rubber hose on them,"

the rubber hose being fastened to the tin tubes.

He didn't know where the rubber hose went to, as he did not go into the cellar; only noticed that the water from the upper ice-box went through the tubes, but he "didn't notice where it went to."

In his affidavit he said he recollected L. 532

"seeing in this apparatus three one-inch tin pipes about eighteen inches long, sol-"dered into the bottom of the upper ice-box and projecting four or five inches "above the bottom; and through each tin pipe one of the supply pipes passed "* * * * There was at this time a rubber hose tightly pulled over "the lower end of these tin pipes, and covered the supply pipes for some feet."

Notwithstanding his statement, that (Ques. 18) "There was a rubber hose on them" (the tin tubes projecting from the bottom of the upper ice-box), it clearly appears from a subsequent answer, that he knew nothing whatever as to the rubber hose, or as to their being fastened into the ends of the tin tubes: L. 422.

"29 Q. From the appearance of the construction of that apparatus where would "you say the water ran to when it left the upper ice-box?
"A. It would run through the rubber tubes if they were attached to the tin "pipes that run through there. If it wouldn't it would run on the floor.

Showing, as I say, that he knew nothing as to the rubber hose, and that when he said they were fastened to the ends of the tin tubes, he drew upon his imagination, led by on the suggestive question:

"19 Q. Was there rubber hose fastened to the tin tubes? L. 422.
"A. Yes, sir."

It would seem to follow, from the statement in his affidavit, that the tin pipes were "one inch tin pipes," over which the rubber hose were "tightly pulled," that the rubber hose must have been of more than an inch inside diameter, and so Meinhard testifies; but Cassebeer says, that the rubber hose were "about three eighths; the "regular size what they use."

"33 Q. What was the size of the rubber hose? L. 423
"A. I should think it would be about three-eighths, the regular size what they "use."

The sum of Cassebeer's direct examination is that he removed the coils from the upper ice-box in 1876 or 1877, at which time he saw the tin tube in the bottom of the upper ice box, but the object of his examination undoubtedly was to have him corroborate Meinhard as to the presence of rubber hose by having him testify that he saw them, though without knowing anything about them.

If it is not apparent from his affidavit and direct examination, that he is a thoroughly dishonest witness, it is made so by his cross examination.—which also shows him to be simply a tool of Meinhard's.

He admits that he gave his testimony at the request of Meinhard:

"62 x Q. Mr. Meinhard asked you to come here, did he?
"A. Yes, sir; he told me probably I would have to come here,"

and that Meinhard talked with him about his apparatus:

"73 x Q. And what did he say to you?
"A. He was talking about the beer machine,"

and said 'they got that thing up again, and a lot of bother to people,' and 'you may have to go and testify about it,' and that was all he said about it.

Also that he gave his affidavit in the Welker case at Meinhard's request, Meinhard going to Cassebeer's place to see him in reference to the affidavit.

"75 x Q. How many talks did you have with him before that?
"A. That is all I remember, except that that time when that affidavit was "made out.
"76 x Q. Then you had a talk with him?
"A. Yes, sir.
"77 x Q. Did he come for you?
"A. Yes, sir, he spoke to me about it.
"78 x Q. He asked you to give that affidavit, did he?
"A. Well, he told me to explain what I had done. Of course I knew what I "had done.
"79 x Q. And you made that affidavit at his request?
"A. No, sir, not at his request. I was asked to make the affidavit."

* * * * * * * *

"81 x Q. How long did he stay at your place when he came on the occasion "when you made this affidavit?
"A. I don't remember how long he stayed there."

* * * * * * * *

"84 x Q. Now, just what did Mr. Meinhard say to you when he came to you to "see you about giving your affidavit?
"A. He says I would remember what I done to the machine, and I told him I "did, and that is all there is to it."

He says that Mr. Sullivan took the acknowledgment to his affidavit at his house, and that no one was with him, although the affidavit shows that it was acknowledged before Harvey F. Remington.

If Cassebeer cannot remember as to the making of an affidavit on the 17th of December, 1885, is it to be expected that he can re-

collect as to an apparatus which he only saw once, as he states, in 1876 or 1877?

And now we have an explanation of the statements of his affidavit as to the diameter and length of the tin pipes; how they were fastened into the bottom of the upper ice-box; how much they extended above and how much below the bottom, and that rubber hose were tightly pulled over the lower ends of these tin pipes; for his affidavit was prepared at Meinhard's dictation, in Cassebeer's absence.

Cassebeer says that he had no talk whatever with Defendant's Counsel, or with any one else about his affidavit—"only with Meinhard."

f. 427

"99 x Q. Did you have any talk with Mr. Sullivan before he showed you the "affidavit that you signed and swore to, or had your talk been only with Mr. Mein-"hard?

"A. My talk was only with Mr. Meinhard."

He says that when he took out the coils he "straightened the pipes" and that then the beer supply pipes went directly to the faucet. Meinhard, you will remember, testified that all he did was to uncouple the brass couplings at each end of the coils and substitute in their place straight pipes provided with similar couplings. No straightening of the pipes, and no running of the beer supply pipes "directly to the faucet."

In describing the work of removing the coils, Cassebeers says:

f. 429

"I cut the coils off and straightened the pipe and soldered the couplings on in-"side and took the faucets off and had them repaired and put back again.

"137 x Q. Then you didn't disturb the beer-supply pipes running to the cellar?

"A. No, sir.

"138 x Q. Other than to cut them off?

"A. That was all.

"139 x Q. And the pieces which you soldered on you soldered in the upper ice-"box?

"A. Yes, sir."

All of which is flatly contradicted by Meinhard, who says that there was neither cutting nor soldering of the pipes; simply the uncoupling of the coils and the coupling on of the straight connections that were first used.

In speaking of rubber hose, he says, in looking into the closet underneath the upper ice box, simply as a matter of curiosity, he noticed the rubber hose running from the bottom of the box down to the floor; that he could not see, and having made no inquiry, does not know where they went to, or for what purpose they were used. Nor does he know what provision, if any, there was for taking care of the water, as there was no water in the upper ice box:

f. 430

"157 x Q. The water was out and the ice was out?

"A. Yes, sir; he took the ice out, or had the most of it out when I came "there."

"158 x Q. So you couldn't see what did become of the water?

"A. No, sir; I couldn't.
"159 x Q. And that was no part of your business there, was it?
"A. No, sir."

Speaking of the tin pipes in the bottom of the upper ice box, he says, they were soldered to the bottom, and "projected up a little * * "* * about half an inch, or an inch, or somewhere around there;" but that he didn't notice whether they extended below the bottom of the ice box, though he supposed they did, "because the rubber tubes had to "fit in it," although he admits that he didn't take the rubber hose off, and that he does not know how the rubber hose were fastened to the upper ice box. That he does not know what was the size of these pipes, but supposes "they were somewhere around, big enough to "catch that quarter of an inch pipe, and that he thought they were three-eighths pipe, "or a little larger."

"164 x Q. Soldered to the bottom of the upper ice-box?
"A. Yes, sir, soldered around.
"165 x Q. Were the ends level with the bottom of the box, or projected up in-"to the box?
"A. Projected up a little.
"166 x Q. How far?
"A. About half an inch or an inch, or somewhere around there.
* * * * * * * *
"169 x Q. Did you notice whether these zinc pipes extended below the bottom "of the ice-box?
"Do you mean the upper ice-box?
"170 x Q. Yes.
"A. No, sir, I didn't notice that.
"171 x Q. You don't know whether they extended below the bottom or not?
"A. I suppose they did a little, because the rubber tubes had to fit in it.
"172 x Q. You didn't take the rubber tube off?
"A. No, sir.
"173 x Q. You don't know how it was connected?
"A. It slipped over.
"174 x Q. How do you know?
"A. I looked at it from the outside.
"175 x Q. What was the size of the tin pipe?
"A. I suppose they were somewhere around big enough to catch that quarter "of an inch pipe. I didn't measure the size?
"176 x Q. Just large enough to let the quarter of an inch beer-supply pipe go "through?
"A. Yes, sir, and leave plenty of room to go through.
"177 x Q. Would you say it was a three-eighths pipe?
"A. I should think it was, or a little larger. There was room enough and "there was a little play room besides.

How do those statements accord with the statements of his affidavit—

"three one-inch tin pipes, about eighteen inches long, soldered into the bottom of "the upper ice-box, and projecting four or five inches above the bottom. *
"* * Rubber hose tightly pulled over the lower end of these tin pipes."

The explanation is, that one is the speculations of the witness; the other the handiwork of the crafty Meinhard.

Even the statement on his direct examination, that the rubber hose he saw was about three-eighths inch size, he has to admit

was simply a matter of guess, and that he gave that size because it was the ordinary size.

b. 431

" 190 x Q. Why, on your direct examination, did you say that the rubber hose " was about three-eighths of an inch?
" A. Well, because I suppose they are about that size as a general rule.
" 191 x Q. You mean, that is the ordinary size of rubber tubing?
" A. Yes, sir.
" 192 x Q. And therefore, you think this must have been three-eighths of an " inch?
" A. Yes, sir; I didn't measure it, and only guessing at it."

Another evidence of Meinhard's handiwork in Cassebeer's affidavit is the use of the word "cooler" for "coils"—a term not used by Cassebeer throughout his examination until brought to his attention, and then not recognized by him. Meinhard, you will observe, does use the words "coils" and "coolers" as convertible terms.

Having stated on one occasion that the tin pipes soldered to the bottom of the upper ice-box were three-quarters of an inch, and on another occasion, an inch in diameter, and that the rubber pipe fastened to the end of these tin pipes were three-eighths in rubber hose, I asked him:

b. 443.

" 370 x Q. If they were three-quarters or an inch, how did they get the three- " eighths inch rubber pipe over the opposite end?
" A. They may have reduced them. That is something I don't know. All I " done was to fix the top of the pipes."

There at least we have the extent of his knowledge, and it is plain that all he has said as to the rubber hose is without the slightest foundation. His lying disposition is shown in his attempt to crawl out of his dilemma by saying "they may have reduced them," but of that he had no knowledge, and he says:

b. 443.

" 371 x Q. Seeing the dilemma you are in, you answer that the lower end of " those pipes may have been reduced in size; do you know that?
" A. No, sir, I don't, for I didn't examine them."

Truly he didn't examine them, for he never saw them.

He admits that the statements of his affidavit, as to tin pipes, as well as the statements made on his present examination as to the tin pipes, are guess work. Here is his testimony as to the statements of his affidavit about tin pipes:

b. 444.

" 384 x Q. Do you mean this statement from your affidavit is?
" A. Yes, sir; all excepting the tin pipes.
" 385 x Q. That you guessed at?
" A. I didn't measure them.
" 386 x Q. That you stated in your affidavit under oath, upon guess, didn't " you?
" A. Yes, sir; I couldn't tell how much they measured.

* * * * * * * *

" 395 x Q. Are you guessing at what you testified to-day?
" A. About the tin pipes, I am not guessing on them.

* * * * * * * *

" 399 x Q. Then isn't it a fact that you have guessed about them both to-day,
" and when you gave this affidavit?
" A. I suppose I did."

Will your Honor receive as evidence the statements of a witness, which it is admitted have no foundation in fact? Simply his guess-work. There would be little difficuly, I take it, in corroborating Meinhard among the saloon-keepers and their hirelings if your Honor would receive testimony of the character of Cassebeer's.

Here is another specimen of Cassebeer's guess work:

" 402 x Q. You didn't see that these pipes projected at all beneath the bottom
" of the box, did you?
" A. They must have projected some.

* * * * * * *

" 409 x Q. That the court may fully understand the manner in which you are
" swearing, I desire you to answer me this question in view of all you have stated.
" Do you know that the rubber hose that you say you saw, was attached?
" A. They were attached to them tubes that went through the upper ice-box.
" 410 x Q. How do you know that?
" A. Because they wasn't laying loose.

* * * * * * *

" 417 x Q. You saw the tin pipes projecting through the bottom of the upper
" ice-box?
" A. Yes, sir."

And finally he was pressed to the point of saying, that he saw the tin pipes projecting, notwithstanding that it is in direct conflict with all his previous statements:

" 428 x Q. And these tin pipes projectinf, did you?
" A. Yes, sir.
" 429 x Q. And you swear to that?
" A. Yes, sir; I saw them projecting, and must project."

It would well repay your Honor to carefully read his cross examination upon this point.

Having made the statement in his affidavit, that

" In fact, while making these repairs, I pulled the supply-pipes through these tin
" pipes to connect them,"

I referred to it on his cross-examination, when he denied having pulled the supply-pipes through the tin pipes:

" 439 x Q. What I mean is, you have testified that you cut the beer-suppiy-pipe
" so as to take out the coil?
" A. Yes, sir.
" 440 x Q. And then soldered the connection on without removing the beer-
" supply-pipe or drawing it up from the cellar?
" A. Yes, sir."

And when I called his attention to the statement of his affidavit he tried to reconcile his statements by saying, that he pulled them up, but he didn't pull them all the way. In making that statement, however, he overlooked the fact that he had said he didn't

go into the cellar, and that it would have been impossible to pull up the beer-supply-pipes even a short way without their being uncoupled in the cellar. When this was called to his attention, without the slightest hesitation, he says: Mr. Meinhard uncoupled them in the cellar," and immediately afterwards acknowledges that he had no such recollection, and simply said so because he supposed he had:

"441 x Q. Having that statement fresh before your mind will you explain this "statement in your affidavit: 'In fact, while making these repairs I pulled the "'supply-pipes through these tin pipes to connect them'?

"A. Yes, sir; I had to pull them up or down so as to get them coupled on.

"442 x Q. Didn't you testify in answer to the last two or three questions that "you didn't pull the pipes up?

"A. I had to shove one way or the other to connect them. I didn't pull them way through the tubes.

"443 x Q. You have testified that you didn't go down in the cellar, haven't "you?

"A. Yes, sir.

"444 x Q. How could you pull those beer-supply-pipes up without uncoupling "them in the cellar?

"A. Mr. Meinhard uncoupled them in the cellar.

"445 x Q. You remember that now, do you?

"A. I suppose he had.

"446 x Q. You don't know whether he had or not, do you?

"A. No, sir; I know there was enough pipe on top so I wouldn't need to shove "them way through.

"447 x Q. When you didn't know that fact why did you tell us that Meinhard "did uncouple them?

"A. He may have left them on for all I know.

"448 x Q. Why did you testify that he did?

"A. He may and he may not.

"449 x Q. Why did you testify that he did?

"A. I don't know why I did.

* * * * * * * *

"454 x Q. And yet you said Meinhard went down and uncoupled them, didn't "you?

"A. He might have gone down, but I don't know.

"455 x Q. Didn't you say he did?

"A. Yes, sir; I suppose he did.

"456 x Q. The fact is, you didn't know whether he did or not?

"A. No, sir; I do not.

"457 x Q. And you guessed at that, didn't you?

"A. Yes, sir; I guessed at that, but that had nothing to do with the affida-"vit."

What a miserable wretch he proves himself to be.

Without the slightest hesitation he deliberately swore "Mr. Mein-"hard uncoupled them in the cellar" which was a lie as he had to acknowledge, with the statement that he doesn't know why he did so swear.

Had he repeatedly sworn to the existence of the apparatus precisely as claimed by Meinhard, could your Honor believe him after such a showing?

Meinhard having, on his direct examination, testified, that it was after Cassebeer removed the coils that he placed the rubber hose around the beer supply-pipes, and that it was in the summer of 1877 an attempt was made to have Cassebeer corroborate Mein-

hard as to the date of the removal of the coils, which, in effect, he did by saying, "I guess 1876, or somewhere around there, or 1877;" although he subsequently admits that when he made the statement, he knew he did no work for Meinhard until the latter part of the year 1878, not having engaged in business until 1878.

Observing the discrepancy in date as to the time of the removal of the coils, between his direct examination and his affidavit, wherein he stated that he removed the coils "in the spring or summer of 1878," and recognizing the importance of fixing the exact date when they were removed—as in that way there would be established a date anterior to the time when Meinhard claims to have placed the rubber hose around the beer supply pipes, a large part of his cross-examination was directed to the fixing of that date.

The conspiracy, which I charge is the foundation of this alleged Meinhard anticipating apparatus, is fully developed in and established by Cassebeer's cross-examination. It leaves no room for doubt that Meinhard and Cassebeer were acting in collusion, and that the defendant's counsel either knew it, or, observing it, in the conduct of the case, endeavored to aid and shield them.

A serious charge, I know, but I have considered well before making it, and I shall satisfy your Honor that it is fully justified; for in no other way can you account for the most remarkable conduct on the part of defendant's counsel. And now I proceed to unfold the cross-examination.

Cassebeer said that his books would show when he did the work of the removal of the coils for Meinhard. It appearing that he still had his books, and that he examined them at the time of making his affidavit, and considering it a very suspicious circumstance that they were not produced on his direct examination to establish a most material date, I asked him: A. 424

"51 x Q. You have those books yet, haven't you?
"A. I think I have.
"52 x Q. Will you permit me to go with you from here to your place of busi-
"ness and you turn to the entry for this work of Meinhard?
"A. I couldn't do that just now, because I have some business out west of the
"city."

Observing what I regarded as his unwillingness to produce the books, and being determined to have them if possible without giving Cassebeer an opportunity to destroy or change any accounts in them, I pressed him for the immediate production of the books: A. 424

"53 x Q. Will you send a note to whoever is in charge of your business, instruct-
"ing them to deliver those books to a messenger?
"A. They couldn't find them unless I looked them over myself. They don't
"know anything about my books.
"54 x Q. How far is your place of business from here?
"A. On Clinton street. If you want to find out, of course I could tell you
"this evening.
"55 x Q. It is important that we know at once, and I will order a carriage if
"you will get into it with me and go and get that book; will you do so?

"A. Of course I have my wagon out in the street here, and a lot of tools and "everything else on them, and I would have to deliver that stuff first before I go "back, because I have a lot of men working and waiting for me on the street, and "if I don't, I am liable to get into trouble.

"56 x Q. Who is attending to your wagon while you are testifying here?

"A. Nobody.

"57 x Q. It would probably only take you ten or fifteen minutes to go from "here and get that book, and your cross-examination will probably take an hour "or two, and won't you oblige us by going and getting it?

"A. I will have to drive back again then, that is all. Of course my time is "very limited, and my time is worth money to me."

Certainly my offer was a very fair one, and had Cassebeer been an honest witness, he would, when so pressed, have availed himself of the offer and produced the books. But he declined; and for no other reason than that he knew their contents would not corroborate his statements as to the removal of the coils,—bearing in mind that he had said that his books would show when he did the work of the removal of the coils for Meinhard.

Not a word of encouragement from defendants' counsel to have the witness produce the books. By his silence endorsing the refusal of the witness, fearing, no doubt, that the books, if produced, would not corroborate the statements made.

Cassebeer knew their contents, and did when he made the affidavit, for he says that at that time he examined his accounts to fix the date of the removal of the coils, and yet he did not give the date,—his statement being that it was in the "spring or summer of 1878:"

(p. 42).

"100 x Q. Having stated, at the time you made the affidavit, you referred to "in your books to see when it was that you did this work at Meinhard's, why was "it that you didn't put the exact date in your affidavit?

"A. Because there was some other little work done at the same time—some "other repairing done at the same time.

"102 x Q. Was that any reason why you shouldn't put the exact date in your "affidavit, if you wanted to tell the truth to the court?

"A. Because it was done at a certain time, took the faucets up and came back, "and sometimes a week and sometimes a day, and there they'd have a lot of jobs "come in, and one time and another there, and that is how that goes.

"103 x Q. How, then, do you know, from the entries on your book, the date "when you took these coils out?

"A. I know from the time the faucets and things were repaired, and the time I "worked at it.

"104 x Q. Won't your books show so many hours work on removing of coils?

"A. Yes, sir; it would show.

"105 x Q. You could have, when you made that affidavit, stated the exact "time, couldn't you?

"A. I suppose I could if I wanted to be so very particular about it.

"106 x Q. You didn't think it was necessary to be very particular; is that it?

"A. No, sir; because I had my head full at the time. I know Mr. Meinhard "moved away from Falls Field six or seven years ago, and his wife died, and after "that he moved away from there to Clinton street."

If Cassebeer did examine his accounts at the time he made the affidavit to fix the date of the removal of the coils, he must have done it at the request of somebody, and it must have been at the

request of that same somebody that he did not specify the exact date.

At whose request was it?

Either Meinhard's or defendants' counsel's, for they alone had to do with Cassebeer at that time.

In this connection we obtained from Cassebeer a most important piece of testimony, which, if true, fixed the date of the removal of the coils at about the year 1881. L-427.

"107 x Q. How long before Mr. Meinhard moved away from Falls Field was it "that you did this work?

"A. It may have been a year or two before that.

"108 x Q. It was a year or two before Mr. Meinhard moved away from Falls "Field?

"A. In that neighborhood."

Meinhard moved from Falls Field, as I have already pointed out to your Honor, in 1883, and a year or two before that would make it 1881 or 1882. This would be in accordance with Barr's statement that the coils were still in the upper ice-box when he put in the soda-water fountain in 1880 or thereabouts, and it is far more probable that he would fix the removal of the coils in this way with greater accuracy than he would in attempting to specify the year.

On being further questioned in reference to the matter, he testified: L. 433-438.

"282 x Q. Then it was done a year or two before he moved from Falls Field?

"A. Yes, sir.

"283 x Q. Was it a year before?

"A. Yes, sir, may be longer.

"284 x Q. As long as two years?

"A. It may have been 1878 or 1879 or 1880. 1878, I think, or along there.

* * * * * * * *

"287 x Q. Didn't you say on your direct examination that it must have been in "1876 or 1877?

"A. Well, it may have been there.

"288 x Q. And didn't you in your affidavit, to which you have referred, say "that it was in the spring or summer or .878?

"A. Yes, it may have been there. Of course I can look in my book and can 'tell you. Of course I would have to look that over carefully in the book to tell "anything about it.

* * * * * * * *

"297 x Q. Now you see, if you had gone and got that book we would have "been able to fix this date, if your books contained anything about it, don't you?

"A I suppose we could."

Thus the necessity for the books becoming more apparent, at the conclusion of his cross-examination as to other matters I again pressed him for the immediate production of the books, or their delivery into the hands of the examiner.

Again he refused, and, strange as it may seem, was sustained in his refusal by the defendants' counsel.

I asked the witness—and bear in mind that it was about seven o'clock in the evening—if he was going directly to his place of

business, that I might send the examiner with him to have the books delivered into his possession. He replied that he was not, but was "going up West avenue." His testimony on that point is as follows, and I pray your Honor to bear it in mind, in view of what is to come.

f. 448

"458 x Q. Are you going from here directly to your place of business?
"A. No, sir, I am going up West Avenue.
"459 x Q. When will you be at your place of business?
"A. I couldn't tell you what time I will be there. I am in and out all the time.
"460 x Q. Will you be there within an hour?
"A. No, sir.
"461 x Q. Will you be there within two hours?
"A. No, sir, not this evening.
"462 x Q. Who is in charge of your place of business while you are away?
"A. In charge of myself.
"463 x Q. Who is in charge while you are away?
"A. I have a young man there.
"464 x Q. Now, Mr. Witness, I must insist upon your going directly back to "your place of business and producing that book which shows the charge when "you did the work for Meinhard; will you do so with the understanding that I "will pay you for whatever time you lose in doing it?"

Instead of an answer, we have this statement from Defendants' Counsel:

f. 449

"Defendant's counsel stated that it is now five minutes after seven, and it "would seem as if it was proper and regular to adjourn until to-morrow morning "at some seasonable hour; and defendant's counsel will request the witness to "bring that book with him here to-morrow morning, as the defendants' counsel "desire it produced in court for the satisfaction of complainant's counsel, and, "while at home this evening, the witness is requested to look up that book and "find the entries which he has testified to."

Followed with a wail from the witness:

"The Witness: Can they make me produce that book?"

One quickly notices the agony in that wail, and it is accounted for by the fact that the witness knew that the production of the book meant his conviction.

After what had transpired, I most strenuously objected to the suggestion of defendants' counsel, and I stated of record:

"The complainant's counsel states that, from the disclosures which hav- "been made during the course of this witness's examination, he is justified in as "suming that most anything might take place if the witness should have until "to-morrow morning to produce that book, and therefore he insists, and for that "reason he has arranged with the Notary that the witness return to his place of "business with the Notary and delivers that book into his possession, with the un- "derstanding that, whatever the cost may be to this witness will be cheerfully "paid by the complainant's counsel. Furthermore, complainant's counsel strenu- "ously objects to the witness so much as opening the book until it is produced here "by the Notary at the opening of the session to-morrow morning, when a full op- "portunity will be given to him to turn to the charge in his book which he says "relates to the repairs in the Meinhard apparatus."

Again defendants' counsel comes to the rescue of the witness, and encourages him in declining to deliver the books to the examiner as requested, by asking him:

"465 Re-D. Q. Will you, on your return home to-night, find that book and "bring it here to-morrow morning at the hour of ten o'clock, if you succeed in "finding it?

"A. I will.

"466 Re-D. Q. Then you may bring it here to-morrow morning."

Now your Honor may say there is nothing remarkable about that.

I admit it. But you will say that it is most remarkable when you know what took place during the night's adjournment.

Before the adjournment I stated of record:

"Complainant's counsel directs the attention of the Court to the most extra-"ordinary fact that the defendants' counsel is unwilling, as is quite obvious from "the course he has pursued, in making this witness deliver the book into the "hands of Notary before he has had an opportunity to tamper with it; and he "further directs the attention of the Court to the fact, which he insists is estab-"lished by the evidence of this witness, that, if the book be produced to-morrow, "under such circumstances, it will be totally unreliable as evidence of anything, "and again insists that that book be delivered to-night to the Notary; and to avoid "any inconvenience to the witness, the Notary, with the complainant's counsel, "will go to his place of business and wait until eleven o'clock for him,"

and further examined the witness as to why it was that he could not return to his shop and deliver the books into the hands of the Examiner:

"481 x Q. Now just tell the Court why it is that you can't deliver that book to "the Notary to-night?

"A. Because I have too much business on my hand to do to-night.

"482 x Q. Don't you go back to your shop before it is closed to-night?

"A. No, sir; the shop was closed long ago.

"483 x Q. What time in the morning will you get there?

"A. I will be down here at ten o'clock to-morrow morning.

"484 x Q. What time will you get at your place to-morrow morning?

"A. I couldn't tell you exactly, because I have to go to the west part of the "city to-morrow morning.

"485 x Q. Before you go to your place?

"A. No, sir.

"487 x Q. Now, what time will you go there?

"A. I couldn't tell exactly what time I will be there.

"488 x Q. Will you be there before seven o'clock?

"A. No, sir.

"489 x Q. How long after seven will you be there?

"A. I don't know. I may be late, and I may have to go somewheres and there "may be some orders at the house to go and see to."

Then I made him describe the books containing Meinhard's accounts. He said they were contained in two books (Q. 490): "A. One has a brown cover and one has got a red cover." And then, before dismissing him, I again pressed him for the delivery of the books to the examiner, which resulted in his admitting that he did not want to produce them before having an opportunity to look them over, finally saying: "Well, I don't "know as the Court has got a right to ask a man to look at his private business."

No amount of urging could induce this witness to deliver the books into the possession of the examiner, as requested, nor would

he promise to produce the books without examining their contents. To prepare your Honor for what is to come, I quote the testimony last referred to:

R. 452.

"499 x Q. Have you any objections to delivering these books to the Notary be-
" fore you look into them?
" A. Of course I would have to look them over to see what there is about it.
" 500 x Q. It is enough for us to look over them and see what they contain,
" and I ask you whether there is any objection on your part to delivering those
" books to the Notary before you look into them, and if so, what is that objection?
" A. Well, the objection is, of course I want to get an idea about what time
" there was work on that machine, the exact dates and things.
" 501 x Q. You want to look into them first, do you?
" A. Yes, sir.
" 502 x Q. You don't want to bring them here and let us see just what they
" contain?
" A. Yes, sir; I can bring them here. I haven't any objection to bringing
" them here to-morrow morning at ten o'clock.
" 503 x Q. But you want to look at them first?
" A. Yes, sir; but I don't want to change anything.
" 504 x Q. Why do you want to see them first?
" A. Because I want to see the charges and dates and everything else.
" 505 x Q. Can't you do that just as well in our presence?
" A. Yes, sir; I suppose so.
" 506 x Q. Have you any objection to delivering these books into the posses-
" sion of the Notary before you look into them, and when you next arrive at our
" office?
" A. Well, I don't know as the Court has got a right to ask a man to look at
" his private business. I can go to work and give a copy of it before a Notary
" without bringing them down.

* * * * * * * *

" 508 x Q. Now, Mr. Witness, I am going to employ a man to go from here to
" your shop and remain all night until you come there, if you will promise to de-
" liver those books to him without looking into them when you arrive; will you
" do so?

> " Defendant's counsel objects to occupying so much valuable time
> " with this manner of browbeating a witness, that the witness has
> " repeatedly and willingly offered to return to his home to-night and
> " find those books and bring them here to-morrow morning at ten
> " o'clock for the inspection of complainant's counsel, and he will not
> " and cannot do anything more, and there is no occasion of complain-
> " ant's counsel taking up any further time in the examination of this
> " witness for that purpose."

" Complainant's counsel again calls the attention of the Court to the fact that
" defendants' counsel is aiding and encouraging the witness in the course which he
" is pursuing in refusing to deliver the books to the notary before he has had an op-
" portunity to examine them."
" 509 x Q. Former question repeated?
" A. I will bring them here at ten o'clock to-morrow morning.
" 510 x Q. Then you decline to deliver them into the possession of the notary
" before you look into them, do you?
" A. I will bring them here at ten o'clock to-morrow morning.
" 511 x Q. Answer my first question?
" A. I will have them here at ten o'clock to-morrow morning."

At the opening of the morning session the witness produced his book—not two books, but one book. The other book, which he said contained the Meinhard account, including the work of the removal of the coils, was lost; so that the book produced was,

according to Cassebeer's statement, of no value in determining the date when the coils were removed—not containing that account:

"512 x Q. Have you with you the two books you referred to last night?
"A. I have one book.
"513 x Q. Why didn't you bring both of them?
"A. Because I couldn't find one."
* * * * * * * * *
"515 x Q. Which book was it you couldn't find?
"A. My first book.
"516 x Q. Then are we to understand you couldn't find the book that contains "the charges for the work that you done for Meinhard in repairing his apparatus?
"A. Yes, sir."
* * * * * * * * *
"540 x Q. Then you have no books at the present time that will show the en- "tries which you made during the first three or four years of your business?
"A. No, sir, I have not.
"541 x Q. When does this book which you have produced commence?
"A. It commenced in the year, I think, 1879."

The book containing the desired account gone, and the bill which Cassebeer rendered Meinhard gone, there was of course no way left to accurately fix the time of the removal of the coils, and apparently no way to contradict the statements made by Meinhard and Cassebeer as to their removal.

On that point they supposed they were safe from contradiction; and they would have been had it not been for a chance discovery. Cassebeer testifies:

"570 x Q. What other books did you look through this morning?
"A. I looked through my old papers this morning.
"571 x Q. And couldn't find any showing any charge for work done for Mein- "hard prior to 1879?
"A. No, sir.
"572 x Q. Did you find any charge upon any of your books or papers showing "when you removed these coils for Meinhard?
"A. There was a bill before that time that was done for Meinhard. That "wasn't on that book; it was in the old book.
"573 x Q. You haven't that book or any duplicate of the bill, have you?
"A. No, sir."

What took place during the adjournment?

Notwithstanding Cassebeer's repeated assertions that he would not return that evening to his place of business that he was "going up West Avenue;" that he had much to do which made it impossible for him to go his place of business and get the books and deliver them to the examiner, he did go directly from the place of his examination to his store, got his books and took them directly to his house, and there examined them:

"521 x Q. You took them to your house, didn't you?
"A. Yes, sir.
"522 x Q. And you examined them at your house?
"A. Yes, sir.
* * * * * * * * *
"535 x Q. You went to your store before supper, did you?
"A. Yes, sir.
"536 x Q. Didn't you go direct from here to your store?
"A. Yes, sir."

What does your Honor now think of Cassebeer?

Do you think he is entitled to belief after such a showing?

But that is not all. Mr Sullivan calls at his house, examines the book there with him and tells him to go to Meinhard's saloon, there to meet him by appointment with Meinhard, which he (Cassebeer) did: p. 457.

"582 x Q. Didn't you go from your house to Meinhard's?
"A. Yes, sir.
"583 x Q. And after you had had your supper?
"A. Yes, sir.
"584 x Q. And after you had examined this book?
"A. Yes, sir.
* * * * * * * * 459.
"625 x Q. Who else was present at Meinhard's last night when you had your "conversation with him?
"A. Well, who else was present?"

Observe there the studied effort to avoid answering the question, when he well-knew, as he subsequently had to admit, that Mr. Sullivan was there: p. 459.

"626 x Q. Yes, that is what I asked you?
"A. There was nobody present in the beginning.
"627 x Q. Who was present before you got through?
"A. Mr. Sullivan stepped in for a few minutes.
* * * * * * * *
"629 x Q. Who told you to go to Meinhard's last night?
"A. Myself told me.
"630 x Q. No one told you?
"A. No, sir.
"631 x Q. Didn't Mr. Sullivan say he would meet you there?
"A. I think he did."

There the murder is out; but you will observe how he tried to conceal it. p. 475

"898 x Q. I ask whether you spoke to Mr. Sullivan or to Mr. Meinhard about "what this book contained?
"A. I spoke to Mr. Meinhard.
"899 x Q. Didn't you speak to Mr. Sullivan too?
"A. Yes, sir.
* * * * * * * * *
"937 x Q. Then are we to understand that Mr. Sullivan examined this book "which you have produced here at your house last night?
"A. He examined Mr. Meinhard's account.
* * * * * * * 478.
"940 Re x Q. You and Mr. Sullivan looked over Mr. Meinhard's account to-"gether, didn't you?
"A. Yes, sir.
* * * * * * * 478.
"947 Re x Q. Mr. Sullivan came to your house especially to see this book, "didn't he?
"A. I couldn't tell that.
"948 Re x Q. Do you know of his coming for any other purpose?
"A. He told me he had some business up on Clinton street, and that is all I "know.
"949 Re x Q. Do you know of Mr. Sullivan coming to your house last night for "any other purpose than to examine this book?

" A. No.
" 950 Re x Q. Is Mr. Sullivan in the habit of coming to your house?
" A. No, sir.
" 951 Re x Q. Did Mr. Sullivan tell you last evening before you left here that he " would call at your house later in the evening?
" A. I think he did.
" 952 Re x Q. And didn't he tell you to go to your store and get this book and " take it to your house?
" A. I think he did." k. 479.

Finally it appears, notwithstanding all that had taken place in reference to the production of the books, their delivery to the examiner, and their not being examined until produced before the examiner, that no sooner were our backs turned than defendants' counsel instructs the witness to go to his store, get the books, take them to the witness's house and await his coming there to examine them; that defendants' counsel did come and there examined them with Cassebeer, and then sent Cassebeer to Meinhard's saloon, where he meets him, and he, Cassebeer and Meinhard enter into a general discussion in reference to the books and the Cassebeer Meinhard account.

There you have an explanation of Mr. Sullivan's reason for not having Cassebeer produce the books when first called for, and not having Cassebeer go to his store with the examiner and deliver the books into his possession. It was for no other purpose than to enable him to first examine the books with Cassebeer and Meinhard, and had the desired account been found, in all human probability the book would not have been produced. It would have been another " lost book."

Like true conspirators they meet under cover of the night in the back room of Meinhard's saloon, and pledge their fealty to the conspiracy in a glass of wine.

Such a showing must indeed give your Honor confidence in the defense. And what a credit it is to the defendants' counsel! I submit that it justifies all that I have said, harsh as it is. Yet he seemed to glory in it, for on the re-direct examination, he brings out the fact that while at Meinhard's, the conspirators had wine to drink. It is said that in olden times conspirators pledged their faith in blood; and no doubt by the time the necessity arises for the trial of another case involving the Gordon patent, these conspirators will have reached that point: k. 478.

" Re-D. Q. How long did I remain in Mr. Meinhard's?
" A. About ten minutes.
" 931 Re-D. Q. And did we have anything to drink there?
" A. Yes, sir.
" 932 Re-D Q. What did we have to drink?
" A. We each had a glass of wine."

This book having been thoroughly examined by Cassebeer and Mr. Sullivan at Cassebeer's house, and no account with Meinhard earlier than the fall of 1879 being found, it was produced the following morning, in the belief that it was perfectly harmless, and

closed the door to all further investigation as to the date of the removal of the coils.

Cassebeer, in explaining the book, says: k. 454

"541 x Q. When does this book, which you have produced, commence?
"A. It commenced in the year, I think, 1879.
"542 x Q. What time in the year 1879?
"A. I think somewhere around the Spring."

and that all the entries contained in the book were for work done subsequent to the spring of 1879 (x Ques. 543), and that he could find no charge for work done for Meinhard prior to 1879.

But he had ascertained from Meinhard that there was an entry on his book showing the payment of money to him on October 29th, 1878; and he asserted, without any reason, that the removal of the coils was included in the bill covered by that payment. Although he knew the exact date of that payment from the entry in Meinhard's book, instead of stating it, tried to make it an earlier date by saying "in the year 1878—in the Summer or Fall of 1878;" this undoubtedly to make it harmonize with one of his statements, that it was in the spring or summer of 1878. Nothing could better illustrate what I term Cassebeer's lying disposition than this piece of testimony: k. 457.

"593 x Q. He showed you where he had paid you $11, did he?
"A. Yes, sir.
"594 x Q. And that was all?
"A. Yes, sir; in the year 1878.
"595 x Q. In the year 1878?
"A. Yes, sir.
"596 x Q. What time in the year 1878?
"A. In the summer or fall of 1878.
"597 x Q. Which was it, the summer or fall?
"A. Somewhere probably around in the fall he paid me, October the 29th he "paid me."
"598 x Q. Now why did you say it was the summer or fall, when you knew it "was the 29th of October, 1878?
"A. That is all right. The work might have been done a few months before "that and the bill not rendered."

You will observe that I had asked him nothing as to the time when the work was done, but simply as to the time when the payment was made to him, as shown by the entry in Meinhard's book.

Feeling perfectly secure, the book containing the account and the bill rendered to Meinhard being lost, he had no hesitation in testifying, with great positiveness, as to certain facts in connection with the work of the removal of the coils.

But the book produced did contain an account of the work done for Gilbert & Meinhard at Falls Field in the year 1878—it having been entirely overlooked by Cassebeer and Mr. Sullivan. In making a critical examination, of the book, we discovered it on page twenty, under the head of Gilbert & Meinhard; and with this ac-

count before us, unknown, however, to Cassebeer, he was cross-examined as to the removal of these coils.

He said if the lost book containing the Meinhard account was found, it would contain a charge for the removal of these coils:

p. 464

"710 x Q. I didn't ask you that; I asked if you found that old book would you "find contained therein a charge for removing these coils?

"A. I suppose the items would be in there.

"711 x Q. There would be one item, I suppose, removing coils, so much time, "wouldn't there?

"A. I think there would.

"712 x Q. That is the way you usually make your entries, isn't it?

"A. Yes, sir."

The account, however, which is printed in full at page 50 of my argument, contains no such item.

He further said that the very first work he did for Meinhard was the removal of the coils, and of that he was positive:

p. 464

"713 x Q. Did you do any work for Gilbert & Meinhard before removing these "coils?

"A. No, sir.

"714 x Q. That was the very first job you did for them, was it?

"A. Yes, sir.

"715 x Q. And that you swear to positively?

"A. Yes, sir.

p. 466 * * * * * * * *

"742 x Q. And the very first work you did for Meinhard of any kind was the "removal of these coils?

"A. Yes, sir."

But the account showed that the first work was gas-fitting work on May 16, 1878, and the items are such as to preclude all possibility of its including the work of the removal of the coils. It took him, he says (681 x Q.) "about three quarters of an hour" to take out the coils, and that at the same time he "repaired some hoppers and water-closets."

of which he has a distinct recollection.

p. 463

"688 x Q. What other repairing did you do at that time?

"A. I repaired some hoppers and water closets.

* * * * * * * *

"690 x Q. You remember distinctly of fixing hoppers and water closets at the "time you removed these coils, do you?

"A. Yes, sir."

There he furnishes us with what will enable us, when we come to consideration of the account, to say whether any of its items include the work of the removal of the coils, for with it must be found an item for the repairing of "hoppers and water closets," which was done at the same time. Certainly there is nothing upon the face of the bill that specifies the repairing of hoppers and water closets.

He goes still further and says, that with the exception of the work of the removal of the coils, and "whatever little jobs was with it repairing," all the work that he did for Gilbert & Meinhard, or Meinhard, is contained in the accounts which he produced com-

mencing in 1879; so that the only work which he did for Meinhard before 1879 was the removal of these coils and "whatever little jobs" of repairing were with it:

p. 466.

"748 x Q. With the exception of this work which you did for Meinhard in the "removal of the coils, does the book which you have produced contain charges for "all the work you did for either Meinhard or Gilbert & Meinhard?

"A. Yes, sir.

"749 x Q. So that the book which is lost would only show the work which you "did for Gilbert & Meinhard, in the removal of the coils?

"A. Yes, sir; and whatever little jobs was with it, repairing."

With that his attention was called to the Gilbert & Meinhard account.

Of course he was surprised, and so was defendant's counsel, and on the re-direct examination he endeavored to account for it by having Cassebeer say, that the night before when he examined the book at his house, they looked simply for Meinhard, and not Gilbert & Meinhard.

With the itemized account before him, Cassebeer found himself in rather an awkward position, with no alternative than to adhere to the statement that the work of the removal of the coils was included in the account of 1878, although he has to confess that there is no item in the bill for the removal of the coils or the repairing of hoppers and water-closets, which he said was done at the same time.

Gilbert & Meinhard's itemized account of 1878 contains three charges, made on the 16th of May, on the 6th of September, and on the 7th of September. An examination of the account will satisfy any one, in view of what Cassebeer has said as to the removal of the coils, that they are not included in that account.

Let us see how Cassebeer explains the account.

Having previously stated that the first work he did for Gilbert & Meinhard was the removal of the coils, he has to acknowledge, after examining the account, that he was mistaken, and that the first work he did for them—which was May 16th—did not include the removal of the coils.

p. 467.

"761 x Q. Then the fact is, you did some work for Gilbert & Meinhard before "you removed these coils, didn't you?

"A Yes, sir.

"762 x Q. Now, didn't you tell us repeatedly that the first work you ever did "for Gilbert & Meinhard was the removal of these coils?

"A. Yes, sir, and some other work besides.

"763 x Q. How do you harmonize the fact that your books convict you of that "misstatement, in that it shows that the first work which you did for Gilbert & "Meinhard was not in the removal of the coils?

"A. Because I thought that was the first work.

* * * * * * * *

"768 x Q. These four items under the head of May 16th have reference to one "and the same job, haven't they?

"A. Yes, sir."

After May 16th, he did no work for Gilbert & Meinhard until September 6th, and he admits that the three items comprising that

charge were one job, and did not include the removal of the coils.

" 818 x Q. Doesn't that charge of September 6th cover the second job which " you did for Gilbert and Meinhard?
" A. Yes, sir.
" 819 x Q. And isn't it a fact that that charge of September 6th has no refer- " ence to the removal of these coils?
" A. Yes, sir.
" 820 x Q. Then it is also a fact, is it not, that you did two jobs at least for " Gilbert & Meinhard before you removed these coils?
" A. Yes, sir.

Thus it appears that, if the removal of the coils is included in that account, it must be in the charge of September 7th. Let us examine the items composing that charge.

" One basin cock." That, of course, had nothing to do with the removal of the coils. There is no pretense on the part of either Meinhard or Cassebeer, that a basin cock was in any way used in connection with the removal of the coils, nor would there be any use for a basin cock in the repairing of hoppers and water-closets, which repairing he says he did at the time of removing the coils.

The second item—"2lbs. solder and hooks." Undoubtedly the solder was used in connection with the basin cock—in the putting in of that cock. No solder or hooks were, or could have been, used in the removal of the coils and the substitution of the straight connecting pipes,—for you will remember that Meinhard testifies, that the straight connecting pipes, as well as the coils, were provided with brass couplings, to be coupled at each end, and that all that was necessary in the removal of the coils was to uncouple them and couple on the straight connecting pipes, and that no "stuff" was furnished. And it is impossible to understand what use could be made of hooks in connection with that work.

The third item—"Time plumber and helper fixing pipe"—does not include the removal of the coils. There was no fixing of pipe in connection with their removal. Furthermore, Cassebeer says he did it himself, and had no helper with him, and the item includes a helper. Again, Cassebeer says that he did nothing on the occasion of the removal of the coils other than to repair some hoppers and water closets, and clearly that item does not include any such repairing, no more than do the other items.

It is impossible to identify any of the items of the charges of September 6th and 7th with the removal of the coils. They certainly do not correspond with what Cassebeer has testified to with regard to their removal. You will remember Cassebeer said, that if the account was produced it would contain an item, removal of the coils, as that would be in accordance with the manner of keeping his accounts. The account being produced, there is no such item, nor is there anything corresponding with what Meinhard has made necessary to identify the removal of the coils. It is quite evident that the

charges, September 6th and 7th, relate to one job, as they include the furnishing of pipe, fittings, basin cock, solder and hooks, and the "time plumber and helper"—portion of two days—is for the running of the pipe and providing it with a basin cock; in doing which the solder was used to secure the cock to the pipe, the hooks and fittings being used with the pipe. It would seem beyond question that those two charges relate to a job of water piping.

Cassebeer says, when called upon to explain the items of the charge of September 7th, that the basin cock

"was a new faucet for a wash basin, and had nothing to do with the removal of the coils;"

that the two pounds of solder were for the upper ice-box and the basin cock, but as already pointed out, no solder was required in the removal of the coils, as both the coils and the straight connecting pipe substituted for them were provided with brass couplings at each end.

"823 x Q. And what was the two pounds of solder and hooks?
"A. The solder was for the upper ice-box and the basin cock.
* * * * * * *
"825 x Q. And what were those hooks for.
"A. For hooking some pipes up in the hall, I suppose?

But he insists that the removal of the coils is included in the item "Time plumber and helper fixing pipe."

That is simply his bald statement, which corresponds in no way with his previous statements as to the removal of the coils. He might just as well have said that it was included in the item of September 6th, "Time plumber fixing pipe;" and even better, for the item of September 7th, "Time plumber and helper fixing pipe," according to Meinhard's own statement, does not include the removal of the coils, as he had no helper with him. But when he reached that last item he was literally compelled to say it was included in that, or else admit that he had not removed the coils until 1879 or thereafter, since he did no work for Meinhard after September 7th, 1878, until September, 1879, and thereafter he worked for Meinhard each year.

Finding that he persisted in the statement that the removal of the coils was included in the last item, September 7th, we brought to his attention his former statement that he had had no helper with him, while that item included a helper, and as usual he endeavored to give an explanation; a reading of which will satisfy your Honor, better than any argument, that Cassebeer's statement that the removal of the coils is included in that last item, September 7th, cannot be received:

"842 x Q. Do you remember having testified that you had no helper with you "when you took out those coils?
"A. Yes, sir.

"843 x Q. Then this item couldn't have been for that, could it?
"A. Why not?
"844 x Q. Doesn't this item say, 'time plumber and helper fixing pipe'?
"A. He may have come there to help on the basin cock.
"845 x Q. Didn't you tell me you didn't have a helper with you at that time?
"A. Yes, sir, I did.
"846 x Q. Now if that is true, then this item does not not refer to taking out of "those coils, does it?
"A. Yes, sir, it does.
"847 x Q. Why does it?
"A. Because I know it was done at that time."

Although he had previously stated (284 x Q.): "It may have been "1878 or 1879, or 1880. 1878, I think, or along there."

"848 x Q. You know that in the face of your oath that a helper was not with "you, and this item in the book says the helper was with you?
"A. The helper may have brought some stuff there to me and took some back, "or something.
"849 x Q. Do you remember having testified that the entry for the removal of "those coils was in your other book?
"A. Yes, sir.
"851 x Q. Didn't you say the entry would contain reference to the removal of "these coils?
"A. Yes, sir.
"852 x Q. Now, this entry does not, does it?
"A. No, sir."

Not only do we find Cassebeer in direct conflict with himself as to the removal of these coils, but he is in direct conflict with Meinhard. One thing is clear, that if Cassebeer did remove these coils, he did not remove them until the latter part of 1879, and the probabilities are that he did, as he says, remove them a year or two before Meinhard moved from Falls Field, which would be in 1881 or 1882.

After the discovery of this Gilbert & Meinhard account in Cassebeer's book, Meinhard suddenly finds the lost Cassebeer-Meinhard bill, for there was then no longer any reason for its concealment. Had it not been for that, it would have remained lost. He undoubtedly had it before, but concealed it because it contained no item for the removal of the coils.

If such a thing is possible, Cassebeer appears in even a worse light than Albert Stief or Barr. He was, I assert, simply the tool of Meinhard. If the statements of such a man are to be believed —a man who has been repeatedly forced to acknowledge—well, say his mistakes—during the course of his cross-examination, there will be very little difficulty indeed in any case to establish an anticipation I leave him in the company I found him—a fit companion for Meinhard, Albert Stief and Barr, of whom you know, and of Schaub, the remaining witness as to the alleged Meinhard apparatus, of whom you have yet to hear.

In many respects, Schaub may be said to be the worst of the lot. His story is certainly most remarkable. A reading of his testimony leads to the positive conviction that it is false throughout.

He is the same Schaub, who was examined in the Welker case as to the alleged Boehm anticipation; that anticipation resting upon,

his testimony, as the constructor of that alleged apparatus. If there was any doubt in your Honor's mind as to the falsity of his testimony in reference to the Boehm apparatus, his testimony in these cases will remove it. I doubt if the man possesses the moral capacity to tell the truth.

He is shown to be not only violently prejudiced, but deeply interested, he himself being an infringer of the patent in suit. Yet, notwithstanding this, and the fact that he was examined in the Welker case subsequent to Meinhard, and that he then knew of the Meinhard apparatus, if his present story is to be believed, he made no mention whatever of it. Not until the necessity arose for defeating the application to re-open the Welker cases do we hear anything as to this man's knowledge of Meinhard's apparatus, and then he gives an affidavit in which he describes the apparatus even to the minuteness of giving the size of the different pipes. Knowledge which could only be acquired by the greatest familiarity with the apparatus. Yet, we find from his cross examination, that he never had anything to do with this apparatus other than to repair two pipes in the lower ice-box, at which time he made a casual examination of the apparatus. That is the beginning and end of his knowledge of Meinhard's apparatus.

But like all falsifiers, he overdid the matter, until he was led into making a statement as regards the construction of the apparatus, which shows beyond peradventure that he could not have known anything of the Meinhard apparatus.

His repairing of the apparatus was the soldering of two of the beer supply pipes in the lower ice-box. It is reasonable, then, to suppose, if he recollected anything of the apparatus, it would be as to the arrangement of these beer-supply-pipes. Yet he says that the beer-supply-pipes went directly to faucets in the kegs and were coupled onto the faucets by a brass coupling soldered onto the end of the beer supply pipes, and he knows this because he had to uncouple the pipes from the faucets in order to solder them,—the soldering upon one of the pipes being close up to the coupling.

After such a showing can he be believed as to any statement he makes as regards this apparatus?

You will remember Meinhard says—as do other of the witnesses—that the beer-supply-pipes did not go within three feet of the faucets in the kegs, being connected to them by a piece of rubber hose three feet long, one end of which was slipped over the end of the beer-supply pipes, and wired to it, and the other end provided with a coupling, which coupled onto the faucet in the keg.

If he could not remember that, is it likely that he would remember the rubber hose surrounding the beer-supply-pipes, with which he had nothing to do, and which extended into the lower ice box only "a few inches?"

Another remarkable thing about this man's testimony is that he

makes and produces a model of the Meinhard apparatus, which he swears he made entirely from his recollection of the apparatus, as he examined it on that one occasion; and yet his cross-examination shows that even the casual examination which he made was not sufficient to enable him, or any other living man, to know the relative location of the upper and the lower ice-box, and the course of the pipes. As if it were possible for a man who casually examined an apparatus in 1878—if his story is to be believed—to nearly ten years thereafter make a model of that apparatus in all its details. Does not that of itself stamp his story as highly improbable?

An examination of his testimony will fully corroborate all that I have said, and at the outstart it should be noted, that before giving his testimony in these cases, his affidavit was read to him and he was otherwise thoroughly coached, which accounts for the similarity between the statements of his affidavit and those of his direct-examination: p. 515.

"633 x Q. Was the copy of your affidavit which Mr. Sullivan gave you to read "the other day in typewriting like this?
"A. He didn't give it to me at all. He read it here as I came up, as he told "me about the case going on.
"634 x Q. You didn't read it?
"A. No, sir.

* * * * * * * *

"637 x Q. Mr. Sullivan read this affidavit to you, did he?
"A. Yes, sir.
"638 x Q. And talked the matter over with you?
"A. Yes, sir; we were talking about it."

The story of his direct examination is, that he did some repairing upon the Meinhard apparatus (Ques. 7) "That was in the year 1878, towards the fall," that

"they broke two of the lower beer supply-pipes off, which is connected with the beer kegs,"

that the repairing which he did was the soldering of those pipes; that while making these repairs he examined the apparatus. From his knowledge thus obtained he describes the apparatus, in doing which he says: p. 481.

"From the upper to the lower box ran the beer pipes, which was connected to "the beer kegs and up to the upper faucets in the upper box; the beer pipes went "through three tin pipes, each one separate; from the tin pipes down to the lower "ice-box went the piece of rubber hose, which was shoved over the tin pipes and "about six to eight inches in length, into the lower box."

Observe that he says, the beer pipes were "connected to the beer kegs."

He gives the length of the tin pipes as "about twelve inches," I should say ten to twelve. In his affidavit he said, "about a foot in length;" and the diameter "an inch."

That the rubber hose surrounding the beer-supply-pipes—"that was inch pipe too, inch hose," and from three to four feet long.

And on his cross-examination he goes to the extent of saying that the rubber hose was black :

" 267 x Q. White or black hose?
" A. Black, and looked dark." h. 501.

Most remarkable, when he confesses that he took no measurements :

" 371 x Q. Did you make any measurements?
" A. No, sir." h. 501.

that he should be able, ten years after, to give the sizes, and that, as given, they should correspond with Meinhard's statement that the tin pipes were of an inch diameter and the rubber hose of an inch diameter, and from three to four feet long. A most remarkable coincidence !

All the more remarkable, when immediately following the giving of these measurements, he says, that onto the end of the beer-supply-pipes were soldered brass couplings, by which the beer supply-pipes were coupled directly to the faucets in the kegs. This, too, when the work which he did was the repairing of those pipes.

h. 481.

" 25 Q. How were those beer supply pipes fastened to the beer kegs in the " cellar?
" A. They were fastened on a brass coupling. soldered on it."

As I have already pointed out to your Honor, such was not the arrangement of the beer supply-pipes.

Then he produces a model, in which the rubber hose surrounding the beer supply-pipes is the most prominent part, making it obvious that if it is a correct representation of the original apparatus, anyone going into the cellar could hardly fail to notice the rubber hose.

To have him correct this, he was asked : h. 482.

" 31 Q. In the Meinhard apparatus could that portion of the rubber pipes in the " cellar which surrounds the supply pipes be seen as plainly as it appears on that " model?
" A. Yes, sir; you could see them right there, except that that part was stick, " ing down; that hole ought to be a little bit higher where the three supply pipes " are into it; close up to the joist it was."

If that statement is true, then we have a serious contradiction of Meinhard and Albert Stief, both of whom endeavor to make it appear that it was only with difficulty that you could see the rubber hose in the cellar.

He says that his repairing of the beer supply-pipes was in the lower ice-box, and that he only repaired them once.

h. 482.

" 33 Q. What part of those beer supply pipes did you repair?
" A. Two of them tin-lined pipes, the supply pipes.
" 34 Q. What part of the pipes ?
" A. The lower part in the ice-box.

* * * * * * * *

"38 Q. Did you repair this apparatus more than once?
"A. No, sir; only once."

* * * * * * * *

That he saw the apparatus after it was taken out of Falls Field, at which time he saw pieces of the rubber hose, and that afterwards he used certain portions of this apparatus—not the rubber hose—in constructing an apparatus upon an entirely different principle, at Germania Hall.

If he did see pieces of rubber hose with the old parts of the apparatus, after it was taken out of Falls Field, that proves nothing, for you will remember that Meinhard says that at the end of each beer-supply-pipe was a rubber connecting piece three feet long, which, however, Schaub has no knowledge of, and as he only saw two or three pieces of rubber hose, it is probable, and I think the cross examination makes certain, that the pieces of rubber hose that he saw were those connecting pieces.

At the very outset of his cross-examination he utters a falsehood, or shows that no reliance whatever is to be placed in his recollection, for he says that when examined in the Welker case he did testify as to the Meinhard apparatus, and that he then told all that he knew about it:

"73 x Q. When you were examined as a witness in those old cases did you "testify about the Meinhard apparatus the same as you have to-day?
"A. No, sir.
"74 x Q. Did you say anything about the Meinhard apparatus when you were "examined before?
"A. I said something, I think. It is a good many years ago, but I think I did.
"75 x Q. Do you know what you said about the Meinhard apparatus then?
"A. There wasn't much said about it.
"76 x Q. You knew as much then about the Meinhard apparatus as you do "now, didn't you?
"A. Yes, sir, I did.

* * * * * * * *

"78 x Q. When you testified in the old cases did you tell all you knew about "the Meinhard apparatus?
"A. Yes, sir."

A reading of his deposition in that case shows that he made no mention whatever of the Meinhard apparatus. On the contrary, his every statement indicates entire ignorance of any such apparatus, for although he was pressed in reference to his knowledge of apparatuses similar to the one he claimed to have constructed for Boehm, he never referred to the Meinhard apparatus, while he did repeatedly say, "I saw them twenty-five years ago in Germany."

Is such a showing consistent with the accurate knowledge which Schaub now claims to have of the Meinhard apparatus? He most certainly would have mentioned it. The only way in which he now fixes the time of his doing these repairs for Meinhard is by reference to his working at Boehm's, about who's apparatus he was testifying, and although he says it was "towards the fall of 1878," he has no way whatever of fixing that time; it is simply his recol-

lection in connection with his having worked during the same time at Boehm's, and he knows he worked at Boehm's in 1878.

He makes no pretence as to any knowledge of the apparatus other than what he acquired at the time of soldering two beer-supply-pipes in the lower ice-box, which did not occupy to exceed an hour. It was after repairing the pipes that he says that he casually examined this apparatus, no one being with him at the time:

p. 500.

"342 x Q. Did you examine Mr. Mehnhard's beer apparatus before or after you "repaired the pipes?
"A. After I repaired the pipes, to see that everything was all right.
"343 x Q. Anybody make the examination with you?
"A. No, sir."

Is it likely that under such circumstances he made a close examination of the apparatus:

With the upper ice-box filed with ice and at least four inches of water, for he says the tin pipes extended four inches above the bottom, how was it possible for him to see the bottom of the box, and as to its construction? Yet that was the only time he ever looked into the upper ice-box, and it was then filled with ice and water:

p. 495

"264 x Q. I ask what you saw in the upper ice-box?
"A. In the upper ice-box I seen from the top the ice laying on top, and them "three tin pipes sticking up."

* * * * * * *

"392 x Q. Was the ice taken out for you?
"A. No, sir.

* * * * * * *

"396 x Q. Was there any water in the bottom?
"A. Yes, sir.
"397 Q. How much?
"A. From three to four inches high.
"398 x Q. And also some ice?
"A. Yes, sir; and ice.

p. 502.

* * * * * * *

"401 x Q. You did no work about the upper ice-box, did you?
"A. No, sir: I didn't do no work in the upper ice-box.
"402 x Q. Simply looked in?
"A. Yes, sir; looked it over.

p. 503

* * * * * * *

"406 x Q. Did you ever look in there more than this one occasion?
"A. No, sir; I didn't look in there more than once on that day.
"407 x Q. And you only looked once on that day that you worked there, in the "upper ice-box?
"A. Yes, sir.
"408 x Q. And also in the lower ice-box?
"A. Yes, sir."

Assuming that he did see tin pipes projecting up through the ice, was it possible for him to see how they were secured to the bottom of the box, and how far they projected up? And yet, that is what he says. Considering the conditions, have we not almost a demonstration of the impossibility of such a thing?

You will see from a reading of the testimony, that I have not

overstated the limited opportunity which this man had of seeing the construction of that apparatus, and especially of the upper ice-box, and appreciating that, it leads to the conclusion, that such knowledge and recollection as he now professes are far beyond the capacity of any man's recollection.

Contrast his present marvelous recollection of this apparatus, and especially of the upper ice-box—which he only examined incidentally—with his total lack of recollection as to the rubber connection between the beer supply-pipes and the faucets in the lower ice-box, which Meinhard and the other witnesses testify was a part of its construction.

Doesn't that show that he has been testifying upon something more than recollection? I submit that his story is manufactured throughout. He has testified to whatever he thought was necessary to meet the exigencies of the case, and to, as he supposed, corroborate Meinhard.

Notwithstanding his marvelous recollection as to tin pipes and the rubber hose surrounding the beer supply-pipes, he failed to recollect the coils, or straight connecting pipes connecting the beer supply pipes with the faucets in the upper ice-box, for he says the upper end of the beer supply-pipes were connected with the three faucets: p. 496.

"269 x Q. The upper end of the beer-supply pipes were connected with the "three faucets?
"A. Yes, sir."

Yet Meinhard says that the upper end of the beer supply-pipes at no time went directly to the faucets; that at first they were connected with straight connecting pipes provided at each end with brass couplings, and afterwards with coils provided with similar couplings, and thereafter the coils were taken out and the straight connecting pipes again used.

Furthermore, it was before the fall of 1878 that he did this repairing, and the earliest date claimed for the removal of the coils is the fall of 1878; so that the coils must have been there when Schaub made his examination; yet he says he saw no coils: p. 502.

"390 x Q. You say there were no coils in the upper ice-box?
"A. I didn't see any."

His cross-examination as to the examination which he made of this apparatus is as follows: p. 495.

"253 x Q. And you saw that apparatus on one occasion at Falls Field, did "you?
"A. Yes, sir.
"254 x Q. Only once?
"A. Yes, sir.
* * * * * * * *
"257 x Q. How long did you work on that apparatus?
"A. About an hour.
"258 x Q. Your work was in the lower ice-box?

" A. Yes, sir.
" 259 x Q. And not in the upper ice-box?
" A. No, sir; in the lower ice-box.
" 260 x Q. Did you look into the upper ice-box?
" A. Yes, sir.
" 261 x Q. Was that the first time you had ever seen that apparatus?
" A. Yes, sir, the first time I examined it.
" 266 x Q. You mean there were coils of pipe in the box in the bottom, do
" you?
" A. No, sir; straight down, went over and bent down to the lower ice-box.

* * * * * * * *

" 394 x Q. Didn't you go there simply to mend the pipes in the lower cellar?
" A. Yes, sir.
" 395 x Q. What business had you to look in the upper ice-box?
" A. I was always interested in making the beer pumps, and I looked in and
" nobody had objection to it.

* * * * * * * *

" 401 x Q. You did no work about the upper ice-box; did you?
" A. No, sir; I didn't do no work in the upper ice-box.
" 402 x Q. Simply looked in?
" A. Yes, sir; looked it over.
" 403 x Q. Did you look in the closet underneath the ice-box?
" A. Yes, sir.

* * * * * * * *

" 409 x Q. So your knowledge of the Meinhard apparatus is confined to this
" one examination?
" A. Yes, sir; that is true.

* * * * * * * *

" 432 x Q. Did you make any other examination except in the upper and
" lower ice-box, on this occasion?
" A. No, sir.
" 432 x Q. Your examination then was confined to looking at the upper
" and lower ice-box?
" A. Yes, sir."

How then could he possibly know the course of the beer-supply pipes from the upper to the lower ice-box?

Yet he assumes to know, for he produces a model which he swears is a correct representation of the Meinhard apparatus, and in which the course of the beer-supply pipes is a prominent feature. He shows how they came through the saloon floor; how they passed down and under the joist and around into the lower ice-box, through a hole in one corner. When asked to account for his knowledge as to the course of the beer supply-pipes he was unable to give any explanation. (Cross Questions 433 441).

In this connection let me call your attention to the way in which he fixes the time he repaired these pipes for Meinhard:

" 460 x Q. Isn't there any other way in which you can fix the time besides the
" fact that you were working at Mr. Boehm's?
" A. I don't know no other way.
" 461 x Q. That is the only way you can fix the time?
" A. Yes, sir, it was the time I worked for Boehm."

Another remarkable thing about this man's testimony is that after giving sizes and describing the apparatus with great particularity, he has to admit that he took no measurements, made no memorandum or drawings. As if it were possible for any human

being to be able, ten years after casually examining an apparatus, to describe it, with great particularity, even, as I have already said, to the minuteness of giving measurements.

"467 x Q. You didn't take the measurement of anything, did you?
"A. No, sir.
"468 x Q. You made no memorandum of anything which you saw, did you?
"A. No, sir.
"469 x Q. Made no drawings of anything you saw?
"A. No, sir."

Besides giving the length and diameter of the tin pipes, he gives the size of the upper ice-box, the length of the beer supply-pipes, the length of the rubber hose which he says surrounded the beer supply-pipes, the size of the lower ice-box, and finally the size of the hole through which the beer supply-pipes entered the lower ice-box and the distance of that hole from the top of the box:

"516 x Q. How large was that hole?
"A. That hole was about four inches.
"517 x Q. Four inches square?
"A. It wasn't square, and was oval shape."

Did you ever hear anything to equal that? All from one examination of the apparatus "towards the fall of 1878." He is able to give not only the size of that hole, but its shape. "It wasn't square, and was oval shape." Well, if after that your Honor can give any credence to this witness, argument will not avail. Meinhard said, in his deposition in the Welker case, that this hole was six inches square (Old Rec. 89-90 x Q.'s), and in these cases, about five inches square ("352 x Q. You think it was about five in-
"ches square, do you? A. Yes, sir).

Even more remarkable is Shaub's recollection that the beer supply-pipes had been patched before, both in the upper and in the lower ice-box:

"311 x Q. You noticed they had been patched in other places?
"A. Yes, sir; broken before.
"312 x Q. The beer supply-pipes had been broken before?
"A. Yes, sir; according to the way I seen it and the way they were connected
"again.
"313 x Q. You could see where they had been soldered?
"A. Yes, sir; could see it on the top in the upper ice-box. I seen it. I opened
"the box.
"314 x Q. Did you notice that the beer supply-pipes in the lower cellar had also
"been mended in different places?
"A. I think they was mended.
* * * * * * * *
"316 x Q. It showed signs of having been mended before, didn't it?
"A. Yes, sir."

He saw rubber hose surrounding the beer-supply pipes projecting into the lower ice box six or eight inches, but he saw no rubber hose connecting the ends of the beer-supply pipes with the faucets. He admits that he had nothing to do with the hose surrounding

the beer-supply pipes. How then did he see them? He says that he saw the ends projecting into the lower ice box, notwithstanding that they came through a small hole at nearly the top of the box, seven feet from the floor (Schaub's deposition):

A. 509.

"521 x Q. How far from the top of the ice-box was this hole that the rubber "pipe went through?
"A. Right close to the top of the ice box.
"522 x Q. Was it a foot from the top?
"A. Close to the top, right close to the joints underneath the joist.
"523 x Q. How high was the lower ice-box?
"A. About seven to eight feet;" and according to Meinhard, "just reached the inside" (856 x Q.) "perhaps a couple of inches" (432x Q.).

Later on, when I suggested if he did not look in the closet underneath the upper ice box, he said that he did, and then enlarged the story by saying that he stuck his hand in the closet and felt of the rubber pipes, and in that way ascertained that they were fastened onto the end of tin pipes projecting from the bottom of the upper ice box. Not satisfied with that, he adds that there was a shelf in this closet on which cheese was kept:

A. 504

"418 x Q. You simply opened the door and put your hand in and examined it "and went away?
"A. Yes, sir, except I saw some package, and some cheese, I think, probably, or something. It was in a wet cloth and a paper.
"419 x Q. Did you keep anything in that closet besides cheese?
"A. I don't know what the rest of the paper was. There was another paper "there.
"420 x Q. Did these papers lie on the floor or what?
"A. On the shelf. There was a shelf a little above the floor.
"421 x Q. And on this shelf laid cheese?
"A. Yes, sir, on the bottom of the ice-box.
"442 x Q. How far was it from the floor to the bottom of the upper ice-box?
"A. About 14 or 16 inches, I didn't measure it."

In this he is flatly contradicted by both Meinhard and Stieff, who say nothing was kept in this closet, other than pails, which Meinhard said were kept there originally.

Schaub says that there were no pails in the closet.

I quote his cross examination in reference to his seeing the rubber hose around the beer-supply pipes, that by a reading of it your Honor may see how perfectly absurd the story is:

A. 500.

"346 x Q. You saw the rubber hose, did you?
"A. Yes, sir.
"347 x Q. Where did you see the rubber hose, at which side of the box?
"A. Towards the left hand.
"348 x Q. And how far did these rubber pipes extend into the ice-box?
"A. Some of them six or eight inches. and went through the side of the box.
"349 x Q. And stuck out from six to eight inches?
"A. Yes, sir, towards the inside.
"350 x Q. Did you see any other rubber pipe around there?
"A. No, sir.

* * * * * * * * 502

"393 x Q. Had you any business that compelled you to look into the upper ice-"box?

"A. Yes, sir; I wanted to see that everything was perfectly tight because I "worked on it."

Observe that to this point he has made no mention of having looked into the closet underneath the upper ice-box, and that his seeing of the rubber hose was confined to the cellar. But now I suggest it to him in a question, and how quickly he seizes upon the idea. f. 503.

"403 x Q. Did you look in the closet underneath the ice-box?
"A. Yes, sir.
"404 x Q. You looked in there, and why did you look in there?
"A. Because I wanted to see how it was made.
"405 x Q. Is that the only reason you looked in there?
"A. Yes, sir.
* * * * * * * *
"410 x Q. What did you see in this closet underneath the upper ice-box?
"A. I seen them three rubber hose going down which was slipped over the tin "pipes.
"411 x Q. How do you know it was slipped over the tin pipes?
"A. Because I stuck my hand in to feel it."

And then he testifies, as above quoted, that there was a shelf in the closet on which there was cheese.

Assuming that he made such an examination—which is highly improbable—is it not strange that he should be able to give the length of the rubber hose as between three and four feet—the same length as given by Meinhard—when he never measured them? f. 506.

"471 x Q. And how long do you say the rubber hose that surrounded the beer "supply-pipe was?
"A. Between three and four feet, each one.
"472 x Q. Did you measure them?
"A. No, sir.
* * * * f. 508 * * *
"500 x Q. The rubber tubes were shoved over the pipes in the bottom of the "upper ice-box?
"A. Yes, sir; you could see them. It was the first time I saw that arrange-"ment."

Keeping all that in mind, how will you account for his having no recollection of the rubber hose about three feet long connecting the ends of the beer supply-pipes to the faucets in the keg, which not only must have been before him, but which he must have handled?

Can your Honor accept this man's recollection as to the presence of rubber hose around the beer supply-pipes, with which he had nothing to do, and which he admits he only saw when making a casual examination of the apparatus, when he has no recollection of the rubber hose at the end of each of the beer supply-pipes, with which he did have to do, if there as testified to by Meinhard and other of the witnesses? It seems to me that his failure of recollection of that which, beyond all question, was there, and with which he must have had to do, is more than sufficient to cause your Honor to reject his entire deposition. His testimony as to the absence of rubber hose connecting the ends of

the beer supply-pipes with the faucets in the keg, and that the beer supply-pipes went directly to the faucets, to which they were connected with brass couplings soldered onto the ends of the beer supply-pipes, is of the most positive character, re-affirmed again and again, so as to place it beyond all question.

Here is his cross-examination upon that point: h. 496.

"270 x Q. And the lower ends of the beer supply-pipes were drawn on to the "brass couplings?

"A. Yes, sir.

"271 x Q. And these brass couplings went directly into the beer kegs, did they?

"A. No, sir; coupled on to the brass cock or beer faucet.

"272 x Q. You repaired the pipe in the lower ice-box, did you?

"A. Yes, sir.

"273 x Q. How many pipes?

"A. Two.

* * * * * * * *

"276 x Q. Where were they broken?

"A. One right close to the couplings and the other about two feet above the "beer keg."

Note the location of the breaks which he had to solder; one right close to the coupling and the other two feet above the beer kegs; the very places where the rubber connecting pieces came:

"278 x Q. How near the coupling was this break in the pipe? h. 496.

"A. Close to the coupling.

"279 x Q. So you had to unscrew the coupling from the beer keg, did you?

"A. Yes, sir; from the faucet.

"280 x Q. Did you put on a new section of pipe, or simply repair it?

"A. No, sir; simply repaired it.

"281 x Q. Soldered it together?

"A. Yes, sir.

"282 x Q. And then did you couple the beer supply pipes fast to the faucet?

"A. Yes, sir; and looked it over to see everything was in proper shape.

* * * * * * * *

"285 x Q. And all three of them coupled directly onto the faucet?

"A. Yes, sir; all on each keg, one.

"286 x Q. Were the brass couplings connected with each keg?

"A. Yes, sir. h. 497.

* * * * * * * *

"288 x Q. And how was the beer cock connected with the keg?

"A. Driven into it.

"289 x Q. Then if I understand you, there was a brass cock for each keg?

"A. Yes, sir.

"290 x Q. And those brass beer cokks were driven into each keg?

"A. Yes, sir; each one was driven into the beer keg.

"291 x Q. And the end of the beer supply-pipe had a brass coupling soldered "on?

"A. Yes, sir.

"292 x Q. And this brass coupling which was soldered onto the end of the beer "supply-pipes was screwed onto the brass faucet in the beer keg?

"A. Yes, sir.

"293 x Q. And that was so with each three of those kegs, was it?

"A. Yes, sir.

"294 x Q. And you examined these specially?

"A. Yes, sir.

"295 x Q. Can't be mistaken about that, can you?

"A. No, sir.

"293 x Q. You are quite certain of that, as I understand it, because you "mended one of the pipes near the brass coupling?

" A. Yes, sir.
" 297 x Q. Broken entirely off?
" A. Yes, sir.
* * * * * * * *
" 300 x Q. But they were all connected in the same way by these brass coup-
" lings?
" A. Yes, sir.
* * * * * * * *
" 319 x Q. After you got through mending the beer supply-pipes, you coupled
" them on again to the beer faucets, did you?
" A. I did.
* * * * * * * *
" 355 x Q. Then you saw no rubber hose connecting the beer-supply pipes with
" the beer keg?
" A. No, sir; not at any time while I was there. It was close broke off to the
" couplings."

Surely it leaves no room for doubt as to his understanding of the arrangement of the beer-supply pipes; an arrangement which was not there either as the apparatus was originally constructed, or as subsequently modified.

Need I go further in discussing this man's testimony after such a showing as to his recollection and failure of recollection? It is not alone his failure of recollection as to the true construction of the apparatus, but his marvelous recollection as to those parts wherein it is necessary to corroborate Meinhard.

A word further as to the model which he made and produced, which he says he made entirely from his recollection:

" 504 x Q. And this model which you have built here you have built from your
" recollection of the apparatus as you saw it on that one occasion?
" A. I did."

I have already pointed out the utter impossibility of his making such a model from the single examination which he made of the apparatus in 1878. A look at the model will convince you of this, having in view his testimony as to the examination which he made of the apparatus.

But he did not make that model from his recollection. He made it at Mr. Sullivan's request, and from photographs and drawings of the Meinhard apparatus used in the Welker case, aided by Meinhard, and a reading of his testimony:

" 97 x Q. Mr. Sullivan ordered that model, did he?
" A. Yes, sir: he told me to make one as it was.
* * * * * * * *
" 101 x Q. Didn't you have a drawing or photograph of Meinhard's apparatus
" when you made this model?
" A. No, sir; I seen the photograph here. That was after, as he gave me the
" order.
" 102 x Q. When Mr. Sullivan gave you the order, you examined this photo-
" graph?
" A. I looked at it.
" 103 x Q. Is that the photograph which you saw?
" A. Yes, sir, and another piece of paper.
(The photograph referred to is Defendant's Exhibit Meinhard Drawing.)

* * * * * * * *

" 105 x Q. What was on that other piece of paper?
" A. It was a pencil mark.
" 106 x Q. A pencil mark of the apparatus?
" A. Yes, sir.

* * * * * * * *

" 108 x Q. What did it show?
" A. Just the three faucets up there and to the beer kegs to the ice-box."

that is, the course of the pipes.

" 113 x Q. You saw this photograph after you got the order from Mr. Sullivan, " didn't you?
" A. Yes, sir; here in the office.

* * * * * * * *

" 118 x Q. You didn't talk with Mr. Meinhard about it?
" A. I did, and told him that Mr. Sullivan told me to make a model of his.

* * * * * * * *

" 120 x Q. Did you take this model to Mr. Meinhard's?
" A. Yes, sir, I showed it to him."

There we see how Schaub got the information which enabled him to construct the model, and it was from the same source that he derived the information upon which his testimony is based. His testimony is nothing more than a description of the model. It is simply repeating, as near as he could carry it, the story which he learned from the photographs and drawings, and from Meinhard. There is not, I repeat, a grain of truth in his story from beginning to end. I doubt if he even mended the beer-supply-pipes, for had he done so he would certainly have remembered the rubber connecting pieces.

After Meinhard moved to Germania Hall, Schaub says he saw there parts of the old apparatus, and among them three pieces of rubber hose. But they were not around the beer supply-pipes. If he did see three pieces of rubber hose, they were undoubtedly the three connecting pieces. At any rate, he could not possibly say whether they were connecting pieces or had been used for surrounding the beer-supply pipes, as he simply saw three disconnected pieces of rubber hose. Yet he draws upon his imagination and swears positively that they were the rubber hose that surrounded the beer-supply-pipes. Another exhibition of the value of this man's testimony as to facts. You will see from a reading of his testimony, that as he found these old parts, he could not by any possibility have known how the three pieces of rubber hose had been used, since he says they lay by themselves having no connection with any of the other parts of the apparatus:

" 608 x Q. How many pieces of rubber hose did you see there at Germania Hall " when Mr. Meinhard told you there the stuff was?
" A. Three of them."
" 609 x Q. Was it all rolled up?
" A. No, sir; all laying on the floor.
" 610 x Q. These three pieces of rubber hose laying by themselves on the floor?
" A. Yes, sir.
" 611 x Q. You didn't know, did you, where those three pieces came from?

"A. Came from the apparatus.
"612 x Q. How did you know that?
"A. He told me there was the old stuff lying there——.
"613 x Q. And that was the only way you know?
"A. Yes, sir.
"614 x Q. And you saw three pieces of rubber pipe?
"A. Yes, sir.
"615 x Q. And no more?
"A. No, sir.
"616 x Q. And no less?
"A. No, sir; no less.
"617 x Q. Do you know who had taken the rubber hose off from the beer sup-
"ply pipe?
"A. I don't know.
"618 x Q. They were off when you got there, weren't they?
"A. Yes, sir; the whole stuff was laying on the floor.
"619 x Q. The beer supply pipes by themselves and the rubber pipes by them-
"selves?
"A. All in a bunch.
"620 x Q. Somebody had taken the rubber pipe off the beer supply pipe, hadn't
"they?
"A. Yes, sir; and the whole stuff was laying on the floor in pieces and it must
"have been taken off by somebody. I didn't take them off.
"621 x Q. And you didn't have anything to do with taking them off?
"A. No, sir.
"622 x Q. And didn't know of their being taken off?
"A. No, sir.
"623 x Q. Only found them off when you got there?
"A. Yes, sir.
"624 x Q. Was there anything peculiar about these three pieces of rubber
"pipe—anything that attracted your attention?
"A. No, sir; nothing.
"625 x Q. It looked just like ordinary rubber pipe, did it?
"A. Yes, sir; and I didn't think anything of it."

The character of this witness, and the amount of credence to be given to his statements could not be better illustrated than by that part of his cross-examination wherein he was asked if he had been subpoenaed to attend before the Examiner. He swore that he had been subpoenaed, but when called upon to produce the subpoena, said he had left it at home. In the absence of the subpoena, defendants' counsel was called upon to say whether the statement of the witness as to his being subpoenaed was true, and he had to confess that he had not been subpoenaed:

"579 x Q. Were you subpœnaed to appear here as a witness?
"A. Yes, sir.
"580 x Q. Have you got your subpoena with you?
"A. No, sir.
"581 x Q. What did you with it?
"A. I left it home, I think
"582 x Q. Who gave you a subpoena?
"A. Mr. Sullivan.

Complainant's counsel calls upon the defendant's counsel to state of record, whether or not this witness has been subpoenaed to attend here.
Defendant's counsel states that he had not been subpoenaed, except he was requested to come.

There is no pretence that the witness did not understand the meaning of the word "subpoena." He deliberately swore that he

had been subpoenaed, and when called upon to produce the subpoena availed himself of the excuse that he had left it at home.

Do not his statements, to which I have called your attention, prove him unworthy of belief? Throughout he appears in a most unenviable light.

Is his total silence as to any knowledge of the Meinhard apparatus in the Welker case consistent with the knowledge which he now assumes to have of that apparatus?

In the case of the Loom Company *v.* Higgins, 105 U. S., 580, it was claimed that one Davis, and not Webster, was the inventor of the invention in question, although Davis, who was the patentee of other inventions and knew the advantages of obtaining a patent for his inventions, never applied for a patent for this invention; in dealing with which the Court, speaking through Mr. Justice Bradley, said:

"On the hypothesis of his being the real inventor, his conduct is inexplicable."

So here, Schaub's conduct is inexplicable on the hypothesis of his knowing of the Meinhard apparatus, as he now testifies, when he made no mention of it in the Welker case when examined as to the Boehm apparatus; although he well knew that the defendants were attempting to establish an anticipation by Meinhard.

Bear in mind that he is an infringer of the patent in suit, having, after assisting Mr. Gordon in the putting in of an apparatus for Farquhar's—where he displayed his ignorance by asking Mr. Gordon if he was not afraid the cold air would escape up through the passage from the lower to the upper ice-box—commenced (and since continues) putting in similar apparatuses for the saloonkeepers in Rochester and the surrounding neighborhood: R. 489.

"150 x Q. For whom have you put up since 1880 these beer-drawing and cool-
"ing apparatuses?
"A. For Joe Hesslinger and two or three on Clinton street. I don't exactly
"remember the names: and one man's is Helfer, and Frank Foery on St. Joseph
"street and Fischer on Conkey avenue."

Mr. Gordon, the inventor, gives some very important testimony, showing beyond all question Schaub's total ignorance of an apparas built upon the Gordon principle at the time he did some work for Mr. Gordon upon the Farquhar apparatus. He says he had to instruct him as to everything, and that notwithstanding his instructions, he made mistakes, one of which took him at least a half day to rectify (~~Compt. Rec., p. 268~~). page 214.

"11 Q. State fully the circumstances connected with your meeting Mr. Schaub
"at Mr. Magin's saloon, and what, if anything, was said at that meeting?
"A. The first time I met Mr. Schaub in Mr. Magin's saloon I rather took him
"to do for his testimony. I told him that I didn't think he had told the truth
"about it. I told him that when he built that ice-box for me at Mr. Farquhar's
"that he didn't know which way cold air traveled, whether it went up or down,
"because he asked me if I wasn't afraid there would be too much cold air flow up
"and out of the stove-pipe that he put in there. He called the air passage a stove-
"pipe.

* * * * * * * *

"19 Q. And Mr. Farquhar was putting in one of your beer cooling and drawing "apparatuses under a license from you?

"A. Yes, sir.

"20 Q. Did you instruct Mr. Schaub how to construct the apparatus?

"A. Yes, sir.

"21 Q. At the time you gave Mr. Schaub instructions how to erect your beer "cooling and drawing apparatus at Mr. Farquhar's, did he or not appear to be fa- "miliar with such an apparatus?

"A. He didn't seem to know anything about it, to my notion.

"22 Q. All seemed to be strange to him, did it?

"A. Yes, sir, and made a sad mistake, a mistake that took me at least half a "day to make good, even though I laid the work out for him all right."

His testimony as to the alleged Boehm apparatus in the Welker case shows his deep interest in this litigation. He is not only personally interested in the controversy, but in deep sympathy with the saloonkeepers of Rochester, by whom he is largely employed. The model which he made and produced he says was a work of love, for which he received no compensation.

All I have said as to this man's being unworthy of belief applies with equal force to his deposition as to the Boehm apparatus. If he is not to be believed as to the alleged Meinhard apparatus, certainly he is not to be believed as to the alleged Boehm apparatus —"*falsus in uno, falsus in omnibus.*"

Having demonstrated, as I think I have, that he has placed himself, by his own testimony, beyond all possibility of belief, as to the Meinhard apparatus, I have also demonstrated that he is not entitled to belief in any statement he has made as to the alleged Boehm apparatus. Such I submit is the legal conclusion.

The alleged Boehm apparatus is founded upon Schaub's testimony, precisely as the alleged Meinhard apparatus is founded upon Meinhard's testimony, and the removal of their respective depositions from the case is the removal of the defence of anticipation. Have they not been more effectually removed by their own showing?

To this point I have presented the case, substantially upon the defendants' own showing; and upon that can it be said—without regard to the other features of the case—that the existence of the alleged anticipating Meinhard apparatus is established **"beyond a "reasonable doubt."** The existence of a doubt is fatal to the defence. I have striven to satisfy your Honor not only as to the existence of a reasonable doubt—for that existed almost from the outset—but to convince you that the apparatus as claimed by Meinhard never existed. That the existence of the alleged Boehm apparatus was not established beyond a reasonable doubt your Honor stated at the time of the argument to reopen the Welker case, and a reading of the very able brief presented by my brother Selden in that case will satisfy your Honor as to the correctness of that conclusion.

A significant fact in connection with Schaub's testimony as to

the alleged Boehm apparatus is developed in the proofs in these cases.

At and after the giving of his testimony in the Boehm case, he called upon Mr. Magin and entered into a conversation with him in reference to his testimony, and after telling Mr. Magin that he had made a mistake in attacking the saloon-keepers of Rochester, proposed that if Magin would relieve him from the acts of infringement which he had committed and give him an interest in the patent, he would not sign his testimony; that it was not too late, as he had not yet signed it. A proposition which was of course peremptorily declined by Mr. Magin.

The conversations referred to took place in Mr. Gordon's presence, he happening there on both occasions.

Schaub does not deny calling at Magin's before signing his deposition in the Welker case, and entering into a conversation with him in reference to the testimony he had given, and that Mr. Gordon was present. He can give no satisfactory explanation of his calling at Magin's on those two occasions other than that he stepped in for a glass of beer. Strange, isn't it, that he should have happened into Magin's on those two occasions, when he was not in the habit of going there; and stranger still, that on both occasions the subject of his conversation should be his testimony as to the Boehm apparatus.

He denies of course that he made any such proposition to Mr. Magin, or had any conversation on the subject of his testimony. Still, he cannot, as I have stated, give any other explanation of why he called at Magin's and talked with him in reference to his testimony as to the Boehm apparatus, other than that it was to get a glass of beer.

Mr. Magin says (~~Comp. Rec p. 389~~) p. 222:

"9 Q. State fully where your first conversation with Mr. Schaub took place, "and who, if anyone, was present and what was said?

"A. The first conversation took place at my place, corner of Andrew and "Water street. Mr. Schaub came to my place about the time he had finished his "testimony. He came in here and had a glass of beer. The first thing he told me "was that he thought I had made a great mistake in attacking the saloon keepers "here in the city which were his customers, and that he had to look out for their "interest, and it was his testimony that would be the means of beating me, and he "thought that it would have been better for me if I had commenced those suits "outside of Rochester; Buffalo, for instance, or some other city. I replied to Mr. "Schaub saying that if a man had any property, name it what you like, chickens, "and if there were parties that stole those chickens here, and other parties that "lived in Buffalo, wouldn't it be natural to commence suit against the parties living "at home? Well, he said, that this was another thing, this wasn't chickens, this "was a patent.

"About that time Mr. Gordon came in. Mr. Schaub said to Mr. Gordon, 'I "'think we will beat you.' Mr. Gordon replied by saying, 'this thing will stand "'on its merits if you fellows don't lie too much.' Mr. Schaub then said that he "had already put those in in Berlin, in the old country, and Mr. Gordon told Mr. "Schaub that while he had employed him at Mr. Farquhar's on West Main street, "that Schaub did not know whether cold air went up or down, that Schaub had "made the remark that he liked the apparatus very well, all except that stove pipe "hole, as he thought too much of the cold air would go up through that stove pipe

"hole. Mr. Schaub then got mad and said, 'I think you take me for a fool,' or "words to that effect and walked away.

"10 Q. Mr. Schaub left your saloon then, leaving you and Mr. Gordon still "there?

"A. Yes, sir. R. 223.

"11 Q. When was it that you had your next conversation with Mr. Schaub, "and where and who, if anyone, was present and what was said?

"A. It was a few days afterwards, perhaps ten or twelve days. Mr. Schaub "came in on that occasion and asked me, saying: 'Well, what do you think of the "'patent now?' 'It is too bad that you have made such a mistake and com-"'menced these suits against my customers, but it isn't too late yet as I haven't "'signed my testimony and it is of no use until signed, but I see that there is a "'great deal of money in putting up these apparatuses and if you and I can agree "'together and enter into partnership, I will not sign my testimony and they can't "'do anything to me for it.' About that time Mr. Gordon came in. Mr. Schaub "turned to Mr. Gordon and asked him, 'What do you think of the suit now?' Mr. "Gordon said, 'I would have liked it better if you fellows would give straighter "'testimony,' or words to that effect, 'would tell the truth,' and Mr. Schaub then "turned around to me and told me in German. 'Well,' he says, 'there is a good "'deal of money in this if you consider this thing, and you and I can control it "'and we will go into partnership together, I will not sign my testimony.' I "turned to Mr. Gordon and translated this conversation to Mr. Gordon, and Mr. "Gordon told Mr. Schaub: 'What is the use of a partnership as long as there is no "'patent, you had better sign your testimony Mr. Schaub.' Mr. Schaub then fin-"ished his beer and left."

Mr. Magin is fully corroberated by Mr. Gordon, who says (~~Comp. Rec. p. 369~~): R. 214-215.

"14 Q. When you arrived at Mr. Magin's saloon did you find Mr. Schaub there?

"A. Talking with Mr. Magin.

"16 Q. After Schaub went out mad, as you say, did Mr. Magin tell you what "Mr. Schaub had said to him?

"A. Yes, sir.

"17 Q. State what it was?

"A. He said that Mr. Schaub said that he had made a mistake by pitching into "the Rochester customers, that he ought to have taken some outside infringers. "Mr. Magin said he told him he didn't see what difference that would make.

"23 Q. After this first meeting with Mr. Schaub at Mr. Magin's saloon, did you "meet him there again?

"A. Yes, sir

"24 Q. When was that and how long after the first meeting?

"A. A very few days, or it might have been a week or two.

"25 Q. On this second occasion did you find Mr. Schaub at Mr. Magin's when "you entered?

"A. Yes, sir, taking a glass of beer when I went in.

"26 Q. At the second meeting with Mr. Schaub at Mr. Magin's saloon, what, if "anything, took place?

"A. He seemed to be very pleasant and asked me what I thought of the law-"suit now; I told him I didn't think much different of it. He again said Mr. "Magin had made a mistake, he thought, and I told him I didn't know about that, "and then he and Mr. Magin talked German, and Mr. Magin told me he said in "German that he had made a mistake by pitching onto his customers, and called "them customers, that he had sued his customers and that if he hadn't done that he "wouldn't have given in his testimony, and Magin said he said it wasn't too late "yet, that he had given in his testimony but he hadn't signed it yet, and if he "would take him in and give him an interest in the business he wouldn't, and I "told him I thought the business wouldn't amount to anything unless the patent "was worth something, and he had better sign his testimony.

"27 Q. That is what you said to Mr. Schaub, was it?

"A. Yes, sir.

* * * * * * * *

" 29 Q. Then Mr. Schaub's proposition to Mr. Magin was that he wouldn't sign " his deposition if Magin would give him an interest in the patent?

" A. So Mr. Magin said he said to him in German.

* * * * * * * *

" 30 Q. Did you hear them talking in German?

" A. Yes, sir. p. 216.

* * * * * * * *

" 33 Q. Prior to meeting Schaub at Magin's saloon did he have any talk with " you about his testimony and its effect upon your patent?

" A. Yes, sir; I met him at the time he was giving his testimony right out " here in front of the Arcade, and he then told me Mr. Magin had made a mistake " or that we had made a mistake; that we oughtn't to have commenced on Roches- " ter parties, and that it was his testimony that was going to beat; 'that you will " find that it will be my testimony that will beat you—will beat the patent.'"

Schaub's cross examination as to his calling at Magin's, and there conversing with Magin, is as follows: p. 489.

" 160 x Q. Don't you remember having a talk with Mr. Magin just before you " signed your testimony in the cases of Magin against Welker and McKay?

" A. Yes, sir.

* * * * * * * *

" 167 x Q. Didn't Mr. Gordon come in while you had a conversation with Mr. " Magin?

" A. No, sir; I never saw him in Magin's saloon, or wherever it was, and never " met him.

" 168 x Q. Do you testify upon your oath that you never met Mr. Gordon in " Mr. Magin's saloon?

" A. In his old place at that time.

" 169 x Q. Then you did see Gordon at Magin's place?

" A. Yes, sir.

" 170 x Q. What was Mr. Gordon doing there? p. 490.

" A. He was talking with Mr. Magin.

" 171 x Q. What were you doing there?

" A. I went in and had a glass of beer.

" 172 x Q. Is that the only purpose you went in there for?

" A. Yes, sir.

" 173 x Q. Did you have a talk with Mr. Magin at that time?

" A. Yes, sir.

* * * * * * * *

" 181 x Q. What business had you for going to Magin's saloon about the time " you were giving your testimony?

" A. I had a glass of beer in there.

" 182 x Q. Weren't there any other saloons around about? p. 491.

" A. Isn't it left to me which one I wanted to go to?

* * * * * * * *

" 186 x Q. Why did you go to Magin's saloon about that particular time, name- " ly, when you were giving your testimony in the old cases?

" A. I didn't think it any harm to do that to any person.

" 187 x Q. You remember Gordon's coming in while you were there, do you?

" A. Yes, sir; it was only in a minute and he went right off again. They was " talking slowly together, and he went off.

* * * * * * * *

" 212 x Q. The day that you were at Magin's saloon and met Mr. Gordon there, " wasn't it just before you signed your testimony in the old cases?

" A. Was it before or else after? I couldn't say.

" 213 x Q. You can't tell whether it was before or after? p. 493

" A. I can't tell for sure."

Further comment as to Schaub and his testimony in both these cases, and the Welker case is unnecessary. Is the story of such

a man—a story which is a mass of contradictions from beginning to end—to be accepted as sufficient to establish a case of anticipation **"beyond a reasonable doubt?"**

Before leaving the defendants' case, I would call your attention to the Saloon-Keepers' Protective Association of the City of Rochester—the actual defendant in these cases. It is established by the testimony of Lehman (~~Comp. Rec~~, p. ~~91~~), Treasurer of the Association, and one of the defendants herein, and Weider (~~Comp.~~ Rec., p. ~~981~~), the Financial Secretary, that these two cases are being defended by that Association.

Lehman testifies, that the association was formed for the purpose of carrying on the defense to these and similar cases, and it so appears by the Constitution and By-Laws of the Association,—a copy of which is in evidence:

"ARTICLE XIV.

"RIGHTS OF MEMBERS.

"SEC. 1. All members shall be entitled to the privileges of said Association, " and shall be defended by the attorney of said Association for all alleged violations " of the Sunday law, and for all alleged violations of the excise laws of this State, " provided such members are duly licensed as such keepers by the Excise Commis- " sioners of the City of Rochester, and also defended against any suits brought " against them or either of them for alleged infringement of United States Letters " Patent granted to Charles Gordon, October 25th, 1881, No. 248,646, for an improve- " ment in apparatus for drawing and cooling beer."

An unlawful association in its very inception, having for its purpose the protecting of violators of the laws of the State of New York and those found appropriating the complainant's patented property. Ought not any defence emanating from such an association be received with the utmost scrutiny? Does it not come with every presumption against it?

Every witness on the part of the defendants is shown to be closely allied to this organization, either as members, in the employ of members, or given work by members:

Albert Stieff, a bartender, in the employ of a member;

Barr, a plumber, doing work for members, himself an infringer, and having contributed to the defence;

Cassebeer, a plumber, a tool of Meinhard, and largely employed by members;

Schaub, an infringer, largely employed by members to construct apparatuses similar to the Gordon, and given their plumbing work in general;

Meinhard, himself a member; I know Meinhard denies being a member, but we find his name enrolled as a member, and being treated as such, so that his denial is of little consequence;

And lastly all their testimony inspired by this association and the desire to protect them.

The same is equally true as to the testimony relating to the Boehm anticipating apparatus.

If either the Meinhard or Boehm apparatuses existed, as is now

claimed, is it not remarkable that none of the saloon-keepers of Rochester should have known or heard of them. They did hear and know of the Gordon the minute it was introduced. Of all the members of this Protective Association, including as it does nine-tenths of the saloon-keepers of the city of Rochester, not one came forward with so much as an intimation of ever having known or heard of either of these apparatuses.

Even Mr. Bartholomay, the brewer, whose business it was to keep fully advised as to the beer drawing apparatuses, and who supplied both Meinhard and Boehm, and frequently visited Meinhard's, tells you that he had no knowledge of any such apparatus as the Gordon prior to seeing it in Magin's saloon, where it was first erected by Mr. Gordon.

Meinhard first learned of the Gordon apparatus from Mr. Bartholomay, who highly praised it, and requested him to go to Magin's saloon and examine it, and put one in like it. And after that it was, if ever, that Meinhard changed his apparatus by the addition of the rubber hose, thus making it the Gordon apparatus. This, however, was in 1882. Of course, after having examined the apparatus at Mr. Magin's—at which time he was given a circular containing a cut and a full description of its construction and operation—there would be no difficulty in changing the apparatus to substantially the Gordon.

Meinhard says that he visited Magin's—

"I don't know if it was in 1879 or 1877 or 1880, and I couldn't say; I know only "I was there once to look at it." (982 x Q.)—

Magin gives the year as 1882—and that he made the visit at the request of Mr. Bartholomay, who highly praised the apparatus and advised him to put one in like it.

Meinhard's cross-examination upon that point is as follows :

"979 x Q. Do you remember visiting Mr. Magin's saloon, and there examining "his beer-cooling and drawing apparatus?
"A. I recollect that I was there, and looked at it.
"980 x Q. When was that?
"A. I don't recollect when it was.
"981 x Q. You can't even recollect that?
"A. No, sir.
"982 x Q. Was it in 1879?
"A. I don't know if it was in 1879 or 1877, or 1880, and I couldn't say. I know "only I was there once to look at it.
"983 x Q. Why did you go there to look at it?
"A. I was curious to find out how it was.
"984 x Q. You had heard a good deal about it, hadn't you?
"A. I heard about it just when Mr. Partholomay put it up for Mr. Magin, He "told me he had done so.
"985 x Q. What did Mr. Bartholomay tell you?
"A. He told he had put up a nice apparatus like this for Magin.
"986 x Q. Praised it very highly?
"A. Yes, sir.
"987 x Q. And said it was something new, didn't he?
"A. No, sir, but just as it ought to be, and he didn't say it was something new.
"988 x Q. Just as it ought to be?

"A. Yes, sir.
"989 x Q. Bartholomay knew what you had, didn't he?
"A. Well, he knew partly at least, because a greater part was done by his ad-
" vice.
"990 x Q. Did Mr. Bartholomay say that Magin's apparatus was like yours?
"A. He didn't say it is, but I put up an apparatns for Mr. Magin, and it is
" first class now.
"991 x Q. And he recommended you to go and see it, didn't he?
"A. I couldn't say. He only told me he had done so,
"992 x Q. Didn't he tell you you ought to put in such an apparatus?
"A. No, sir.
"993 x Q. When was it Bartholomay told you of Magin's apparatus?
"A. It was after he had advised me to make those changes and put in this ap-
" paratus, but how long after I couldn't say. h. 368.
"994 x Q. Was it a month or two after?
"A. This I couldn't say; I only recollect it was done to get Mr. Magin a custo-
" mer for his beer.
"995 x Q. What was done to get Mr. Magin a customer for his beer?
"A. To put in this apparatus for him.
"996 x Q. Bartholomay had put it in to get Magin as a customer?
"A. Yes, sir.
"997 x Q. You had interest enough in what you had heard of the Magin appa-
" ratus to go to his saloon and ask to see it, didn't you?
"A. I had no other interest, but I was curious to see if it was better than mine
" was the reason I went there to look at it.
"998 x Q. Did you see Mr. Magin when you got to his saloon?
"A. Mr. Magin went with me to the cellar and showed it to me, I think.
"999 x Q. Showed you the whole thing?
"A. Yes, sir.
"1000 x Q. What did you say to Mr. Magin?
"A. I don't recollect.
"1001 x Q. Did you say to Mr. Magin, that you had an apparatus resembling
" that?
"A. I guess I did not; I think not.
"1002 x Q. Didn't you express surprise to Mr. Magin at the completeness of his
" apparatus?
"A. I may have done so, and I may not.
"1003 x Q. Didn't you?
"A. I couldn't say; we exchanged some words, but what they were I couldn't
" say.
"1004 x Q. Didn't you tell Mr. Magin that you had no idea that he had any
" such thing and that it was something new to you?
"A. I don't recollect about a single word we said.
"1005 x Q. Will you testify that you didn't say so to Mr. Magin?
"A. I will not testify anything at all about this occasion."

* * * * * * * *

"1130 x Q. Do you know of their ever having been stopped up? h. 378
"A. I don't recollect anything sure about it, but I am sure if they dipped the
" water out the pipes were stopped up.
"1131 x Q. You would account for the fact that if they did dip the water out
" the rubber pipes must have been stopped up?
"A. It was the pipes in the top of the ice-box."

Had Meinhard, at the time he examined the Gordon apparatus at Magin's saloon, any such apparatus as he now claims, would it not have been most natural for him to have mentioned it to Mr. Magin? Would he not have exclaimed, Why, this apparatus is the same as mine; or, It works upon the same principle; or, I have one resembling it? Instead of that, he exclaimed, as Mr. Magin says:

"Well, well, you have a very complete thing, the best thing I ever saw; I have "pressure, but mine is the common pressure. I have no connection like this."

pointing to the end of the pipe surrounding the beer-supply pipes and cold water passages.

Mr. Magin's account of Meinhard's visit to his place is as follows (~~Comp. Rec., p. 392~~) : A. 224.

"19 Q. If Mr. Meinhard at any time visited your place and there had a conver- "sation with you, state when it was and what took place?

"A. Shortly after the filing of the complaint in the cases of Magin against "McKay and Magin against Welker, Mr. Meinhard came to my place. It was "just at noon or half-past twelve. I was just eating my dinner. I was called up "by my wife's sister, who tended the bar while I was eating dinner. She said "there was a gentleman who wanted a circular. I came up-stairs and saw that it "was Mr. Meinhard. I said, 'How do you do, Mr. Meinhard?' He said, 'How "'do you do?' He then said he heard that I had a patent, and that there was "some law suits about it, and he came there to get a circular. I told him I did "have a patent, and those law suits were for testing the validity of the patent. I "then walked around behind the bar and opened the drawer in which I kept the "circulars and handed Mr. Meinhard, I think, two circulars. I then said to Mr. "Meinhard, 'Seeing that you are here, why not look at the original?' Mr. Mein- "hard said, 'I might as well.' I invited him behind by bar, up to where the upper "ice-box was located, and I took off the cover to the upper ice-box and called Mr. "Meinhard's attention to the galvanized iron lining in the upper ice-box, and told "Mr. Meinhard that there was half an inch of resin filling all around the sides "and bottom of that upper ice-box, between the galvanized iron and the wood.

"I asked Mr. Meinhard to rap against the sides of this galvanized iron in order "to feel the soundness of it. I then scraped away the ice from the bottom of the "upper ice-box and showed Mr. Meinhard the hole in the bottom of the ice-box "through which the beer pipes ran down into the lower ice-box. I told Mr. Mein- "hard that the water from the melted ice, and the cold air, passed down around "the beer supplies-pipes into the lower ice-box; that there was no cold wasted, as "the pipe leading down into the lower ice-box was protected with a resin filling, "and that the cold air from the upper ice-box served to cool the lower ice-box as "well.

"I then called Mr. Meinhard's attention to the beer faucets, and I told him "there was a resin jacket; that those beer faucets were supplied with a resin "jacket which prevented the beer from getting warm at intervals when there "was no beer sold. I then opened a little cupboard underneath the bottom of the "upper ice-box, and I showed Mr. Meinhard the resin-filled pipe, and asked Mr. "Meinhard to rap against that pipe and feel the soundness of it, which he did. "Mr. Meinhard then asked me whether the petent was on resin. I told him that "it was not; that I would show him when we got down stairs. We then went "down stairs into the lower ice-box, and lit the gas jet in the lower ice-box, and "I walked up to the end of the pipe which surrounds the beer supply-pipes and "cold air passage, and I then asked Mr. Meinhard to step up to the end of that "pipe.

"I told Mr. Meinhard that those pipes came down thorough that hole which I "showed him in the bottom of that upper ice-box, and the cold air and water fol- "lowed down those beer-supply-pipes. I asked Mr. Meinhard to hold his hand at "the bottom of this pipe to feel the cold air and the drip, which he did. Mr. "Meinhard then said, 'Well, well; you have a very complete thing, the best thing "'I ever saw. I have pressure, but mine is the common pressure. I have no con- "'nection like this,' pointing to the end of the pipe surrounding the beer-supply "pipes and cold air passage. I told Mr. Meinhard that as near as I could learn the "pressure was old, but that this invention was a novel one. He then said, 'Every- "thing looks so nice and clean,' and 'I will read my circulars and get myself better "'acquainted with this patent.' We then came up stairs and had another glass of "beer and Mr. Meinhard left. That is all that I remember.

"20 Q. Did you give Mr. Meinhard some of your circulars?

'A. did.

"21 Q. And was it those circulars that he said he would read and get better "posted on the patent?

"A. Yes, sir.

"22 Q. Prior to this visit of Mr. Meinhard's had he been in the habit of coming "to your saloon?

"A. I don't remember ever seeing him in my place. He may have been there, "but not that I can remember.

"23 Q. Has he been there since that time to your recollection?

"A. No, sir; not that I know of."

The only occasion when he ever visited Magin's was to see this apparatus.

Truly, indeed, did he read the circular which Mr. Magin gave him and get himself better acquainted with the patent. So well acquainted, that he either then changed his apparatus into the Gordon, and now swears that he did it years before, or built a fairy structure and testifies to its actual existence in 1877.

I could safely rest the case upon the defendants' own showing, for viewed from any standpoint, there is, to say the least, far more than a "reasonable doubt" as to the existence of the Meinhard apparatus having an air and water passage from the upper to the lower ice box prior to the date of Gordon's invention.

If there is, in your Honor's mind, so much as a doubt as to its non-existence, it will be removed by a reading of the depositions of Otta Schanz, Raymond Stief, Otto Hahn, George J. Englert and John V. Englert. I will submit them to you without extended argument, as I regard it unnecessary. They testified in a plain, straightforward manner as to the actual construction and operation of Meinhard's apparatus covering the period when put in by Neuhart until 1881, when Schanz left Meinhard's employ. If they tell the truth—and there is an entire absence of any motive for their testifying other than to the truth—the beer-supply pipes were never surrounded with rubber hose, and there was no air and water passage from the upper to the lower ice-box. And in this they could not be mistaken, for their testimony shows that they were in a position to know, and must have known, if ever the beer supply-pipes were surrounded with rubber hose. There is no escaping one of two conclusions. Either that they have told the truth, or have deliberately lied, without any motive whatever.

Remarkable that five men could be found who would, without the slightest motive, swear falsely as to this Meinhard apparatus. It cannot be denied that they must have had considerable knowledge of the apparatus, for it is conceded that they describe it correctly, with the exception of the rubber hose around the beer-supply pipes, which they swear in the most positive manner were never there.

Surely, we do present a preponderance of evidence as to the non-existence of the Meinhard apparatus with rubber hose around the beer-supply pipes, and of such a character that by no process

of reasoning can it be said that the defendants have established its existence beyond a reasonable doubt.

Otto Schanz—42 years of age, and employed as a porter at Wile, Brickner & Wile's clothing store—testifies (~~Comp. Rec., p. 949~~), that he (Q. 6)

p. 150.

" was engaged as regular bartender by John Meinhard from the fall of 1879 to the " spring of 1881, about a year and a half,"

during which time he had charge of the saloon bar and the beer drawing apparatus located therein.

Meinhard stated in his deposition in the Welker case that Schanz was one of the regular saloon bartenders, and on his cross-examination in these cases makes the same statement with the admission, that Schanz ought to know as to the construction and operation of the apparatus in question (Meinhard's deposition 942 x Q.).

Undoubtedly one who had charge of the apparatus for a year and a half would know of its construction and operation. Here, then, we start with a witness who it is conceded was in a position to and did know of the apparatus as it existed in and from the fall of 1879, until the spring of 1881. So that the only question is as to his truthfulness. Was the apparatus as he describes it, or as described by Meinhard? Schanz testifies in the most positive manner that there was no air or water passage from the upper to the lower ice-box, the beer supply-pipes being uncovered.

Schanz had daily to do with this apparatus, including the tapping of the beer in the lower ice-box, the cleaning out of the upper ice-box, the putting in of the ice, and the taking out of the ice-water. Those, it is undenied, were a part of his daily duties.

For about a year prior to the fall of 1879 Schanz was employed by Meinhard to assist him in the garden on Sundays, but his knowledge of the apparatus is confined to the period from the fall of 1879 to the spring of 1881, when he had it in charge. In describing the Meinhard apparatus, as it was during that period, he says (Q. 12):

" He had a small upper ice-box behind the bar and three faucets attached to " it, three or four faucets and each faucet connected with a coil, and from the coil " the pipes run through the floor and slanted off towards the wine-cellar and en- " tered through the wine-cellar and to the lower ice-box below;" that (Q. 14) " The beer was kept in the lower ice-box."

p. 151

And the beer supply-pipes, running from the upper to the lower ice-box (Q. 15)

" were connected to the beer faucets with rubber hose coupling at one end and " fastened to the lead pipes with copper wire;" (Q. 16) " There was a " rubber pipe on the end of each beer-supply-pipe."

p. 151

one end of which was slipped over and wired onto the end of the beer supply-pipes, and the other provided with a coupling for coupling onto the faucet driven into the keg. The coils of pipe—one for each beer-supply-pipe—rested on the bottom of the upper ice-box, and were formed by coiling a portion of each beer-supply-pipe. The beer-supply-pipes where they passed through the bottom of the upper ice-box, were tightly soldered so as to make it water-tight, the water resulting from the melting of the ice having always to be dipped out. p. 152

" 29 Q. What became of the water resulting from the melting of the ice in this " upper ice-box?
" A. I always had to dip it out.
" 30 Q. Was there any other way of getting the icewater out of this upper ice-" box?
" A. No, sir.
" 31 Q. Was there any drip pipe or other arrangement by which the water " could run off of itself?
" A. No, sir.
" 32 Q. Was it a part of your daily duties to dip the water out of this upper ice " box?
" A. Yes, sir.

* * * * * * * *

" 35 Q. Were there any tin or drip pipes of any kind in the bottom of the upper " ice-box?
" A. No, sir.
" 36 Q. Was the bottom of this upper ice-box water-tight?
" A. Yes, sir.

* * * * * * * *

" 40 Q. Was there any arrangement by which the water that accumulated in " the upper ice-box could be drawn off in any way?
" A. No, sir.
" 41 Q. The only way was to dip it out?
" A. Yes, sir."

He not only asserts that the water had always to be dipped out, there being no other way to get it out, but denies that there were any tin pipes in the bottom of the upper ice box. Undoubtedly if there were tin pipes in the bottom of the upper ice-box for carrying off the waste water Schanz knew of it. Either they were not there, or he is lying, and it is highly improbable that it is the latter. The fact that this man abandoned the disreputable business of bar tending and was found laboring as a porter with one of the largest clothing houses in the city of Rochester, in whose employ he had been for about five or six years (Re-D. Q. 966), is certainly very satisfactory evidence as to his character and worth in comparison with men of the stripe of Meinhard and Albert Stief.

In describing the course of the beer-supply pipes from the upper to the lower ice-box, he says that as they came through the floor into the cellar and passed off into the wine cellar through a hole in the side of the lower ice box, they could be plainly seen both in the cellar and in the wine cellar:

"49 Q. As the beer supply-pipes came down into the cellar and slanted off into "the wine cellar, could they or not be plainly seen?
"A. Yes, sir.
"50 Q. And could they also be seen in the wine cellar? p. 153.
"A. Yes, sir."

He further says that there was no covering of any kind around the beer supply pipes from the upper to the lower ice-box, that they were always bare and uncovered, and that at no time from the fall of 1879 to the spring of 1881 was there any water or air passage from the upper to the lower ice-box, either through rubber hose or otherwise. This he swears to in the most positive manner, concluding with the statement that had there, during that period, been any rubber hose or other covering around the beer-supply pipes, he certainly would have known of it. And how could it be otherwise, when he not only had charge of the apparatus but had to tap the beer in the lower ice-box, clean the upper ice-box, put in the ice from two to three times a day and dip out the water? Certainly no one would be foolish enough to argue that there could have been rubber hose around the beer-supply pipes and Schanz not know of it.

His testimony as to there being no covering around the beer-supply pipes is as follows: p. 154

"64 Q. Was there any covering of any kind around the beer-supply pipes from "the upper to the lower ice-box?
"A. No, sir.
"65 Q. Were the beer-supply pipes during the eighteen months that you were "barkeeper for Meinhard always bare?
"A. Always bare.
"66 Q. As you saw the beer-supply pipes coming through the floor and branch-"ing off into the wine cellar, were they covered or bare?
"A. They were bare.
"67 Q. And were they also bare in the wine cellar?
"A. Yes, sir.
"68 Q. Had there been any covering of any kind surrounding the beer-supply "pipes from the upper to the lower ice-box, would you have seen it?
"A. Sure.
"69 Q. And you would certainly have known of it, would you?
"A. Certainly.
* * * * * * * *
"73 Q. Was there any water or air passage from the upper to the lower ice-"box?
"A. No, sir.
"74 Q. Was there any passage or connection whatsoever between the upper "and the lower ice-box?
"A. There was no connection only through the beer-supply pipes.
"75 Q. The beer supply-pipes were the only things?
"A. Yes, sir; the only connection with the upper bar-room.
"76 Q. Was there any rubber hose or pipe surrounding the beer supply-pipes "from the upper to the lower ice-box?
"A. No, sir.
* * * * * * * * p. 156.
"97 Q. And upon all such occasions when you have seen the beer supply-pipes "running from the upper to the lower ice-box, were they always bare?
"A. Always bare.
"98 Q. No covering of any kind upon or around them?
"A. No, sir."

Testimony of the most positive character, by one who had more to do with the apparatus than even Meinhard himself. There is not a witness in the entire case who had to do with that apparatus continuously for a year and a half as did Schanz It is impossible to conceive how Schanz could be mistaken as to there being no water or air passage between the upper and the lower ice-box. One casually examining such an apparatus, even on two or three occasions, might very easily be mistaken in this respect, but one who had daily to do with it for a year and a half could not possibly be mistaken. On no theory of mistake can Schanz's testimony be accounted for. It is either the truth, or he has deliberately lied, and without motive. But a careful reading of his examination will satisfy anyone that he is not only to be believed but that he is a scrupulously truthful witness.

In further speaking of the apparatus he says, that there was a gas jet located on the outside of the wine cellar, which was kept dimly lighted, and that in going into the cellar, the practise was to turn it up, when the beer-supply pipes could be plainly seen where they came through the floor until they entered the side of the ice-box. Meinhard and other of the defendants' witnesses admits that there was a gas jet in the cellar which was kept lighted, the only difference being as to its location.

Schanz's attention being called to the model made by Schaub, "Defendants' Exhibit Meinhard Apparatus Model," showing the beer-supply-pipes surrounded by rubber hose, he said that the beer-supply-pipes were never so surrounded. p. 156.

"101 Q. Examine the model which I now show you, marked "Defendant's "Exhibit Meinhard Apparatus Model," and state whether there was any rubber "hose around the beer-supply pipes, such as shown in this model?

"A. No, sir.

"102 Q. Never any such arrangement?

"A. No, sir.

"103 Q. During the time you tended bar for Meinhard?

"A. No, sir; never.

"104 Q. Did the beer-supply pipes ever go into the front of the ice-box, as "shown in this model?

"A. No, sir; they went in on the east side near the northeast corner."

but were always bare and uncovered, the construction of the apparatus being as shown in Complainant's Exhibit "Model of Meinhard's Apparatus." The coils were still in the bottom of the upper ice box when Schanz left in '81. Speaking of the practice as to keeping the saloon open on Sundays, Schanz says, that it was always open from morning "up to about 7 o'clock in the evening, and then we opened the Concert Hall."

Such is the testimony of Schanz, and I submit that it establishes beyond all question that Meinhard never placed rubber hose around the beer-supply-pipes, as claimed by him, for if he did not have them during the period from the fall of 1879 to 1881, then, according to his own testimony, he never had them, for he says he

had them, if at all, from 1877 until the apparatus was taken out in 1883.

It is said that Schanz was employed by the complainant to look up certain parties whose names he gave to the complainant as having knowledge of the Meinhard apparatus. That is true. But does that discredit him? He was almost the only one to whom the complainant could go for information as to this Meinhard apparatus, since Meinhard only gave the names of three persons, one of whom was in Germany. Finding that Schanz did know of this apparatus, and knew who were employed there, and ought to know of the apparatus, complainant obtained permission of Schanz's employers to have him look them up. That is the extent of his connection with the complainant or this case in any manner or way whatsoever.

It is only necessary to read his cross-examination upon this point to become thoroughly convinced that his testimony is most truthful, and that he described the apparatus as it actually was.

The fact is brought out on his cross examination that there was no cupboard underneath the upper ice-box (Comp. Rec., p. 322.) This is important, bearing in mind that Cassebeer and Schaub testify that they saw the rubber hose around the beer-supply pipe by looking into the closets underneath the upper ice box.

Schanz's testimony presents the naked question of whether you will believe him or Meinhard. Can there be any doubt as to which of them you will believe when Meinhard stands as a self-confessed perjurer? There is no other way to put it, for he deliberately swore, and for a purpose, that the saloon was always closed on Sundays, and the apparatus not used, and then had himself to admit that the saloon was always open on Sundays and the apparatus always used.

Is a case of anticipation established "beyond a reasonable doubt" where one who had the alleged anticipating structure in his charge for a year and a half, swears in the most positive manner that it never contained the disputed feature? That, to this point, is this case.

But Schanz's testimony does not stand unsupported. We have the testimony of Raymond Stief, against whom, Meinhard was finally compelled to admit, nothing could be said.

Raymond Stief is a shoemaker, having quit the beer business when he left Meinhard's employ in the fall of 1879, and be it said to his credit, that during the time he was working at Meinhard's prior to the spring of 1879 when he was employed as regular bartender, he was learning his trade of shoemaker.

He commenced working for Meinhard in the spring of 1877 as a waiter boy on "Sundays and picnics and such things as that" (Q 14), and continued in that capacity for about two years, until the spring of 1879.

As waiter boy he had to go into the cellar and get out of the lower ice-box the kegs of beer that were used in the bar in the

garden. So he must have been familiar with the lower ice-box prior to his being employed there continuously as bartender.

It was in the spring of 1879 that Meinhard employed him as his saloon bartender, and he was so employed continuously from that time until the fall of 1879, during all of which period he had in charge and used the beer-drawing apparatus; and he says that during the same period the saloon was always open on Sundays from morning "until towards evening." p. 28.

"15 Q. Were you ever employed by Meinhard other than a waiter boy?
"A. Yes, sir.
"16 Q. When was that, and for how long, and in what capacity were you em-
" ployed?
"A. That was early in the spring I was hired there steady tending bar and
" working around the place.
"17 Q. The spring of what year was that?
"A. That was the spring of 1879.
"18 Q. And after that you worked there continuously, did you?
"A. Yes, sir.
"19 Q. Until what time?
"A. Until the fall.
* * * * * * * *
"22 Q. Was this saloon proper kept open on Sundays?
"A. Until towards evening.
* * * * * * * *
"24 Q. Was that the case every Sunday during the time that you worked there
" steadily in 1879?
"A. Yes, sir.
* * * * * * * *
"28 Q. During the time that you worked at Meinhard's did he have a beer cool-
" ing and drawing apparatus in use?
"A. Yes, sir.
* * * * * p. 29. * * *
"30 Q. While you were tending bar at Meinhard's in 1879 did you draw beer
" through this beer drawing and cooling apparatus?
"A. Yes, sir."

Stief, like Schanz, was in a position to know and must have known of the construction and operation of this apparatus for the six months before Schanz took charge as bartender; Schanz becoming regular bartender when Raymond Stief left.

Meinhard admits, that Raymond Stief was bar-tender in the saloon for a "short time," and must have known of the construction and operation of his beer-drawing apparatus. But without the admission, it would require no argument to satisfy your Honor, that one having charge of the apparatus, even for a short time, would know if there was a water passage from the upper to the lower ice-box. If there was such a passage, the attendant would most certainly have noticed that the water ran off, of itself, requiring no attention; while if there was no such passage, the water would have to be looked after by the attendant. It was just one of those things that had to come under the notice of the one in charge of the apparatus.

Stief says there was no water passage from the upper to the lower ice-box, and that he always had to dip the water out. As to this I do not see how he could be mistaken: p. 29.

" 38 Q. How did they get the melted ice-water out of the upper ice-box?
" A. Dipped it out.
" 39 Q. Was that a part of your duties?
" A. Yes, sir.
" 40 Q. Was there any other way of getting the melted ice-water out of the " box?
" A. Not at all."

As Stief left Meinhard's in the fall of 1879, the description of the apparatus which he gives must be of the apparatus as it existed prior to his leaving, for there is no pretense that he ever saw it afterwards. He has either described the apparatus as it then existed, or he has given a false description. No motive is suggested for his swearing falsely, and his testimony shows him to be in no way interested in the controversy.

The importance of Stief's testimony is apparent, and if he is to be believed, Meinhard's apparatus did not have the rubber hose surrounding the beer supply-pipes, from the spring to the fall of 1879.

Stief's description of the apparatus corresponds with that of Schanz. Describing the apparatus, he says:

" There was three or four faucets out of the front end of the box, and the " cover of the box laid right on top of it, and there was pipe run that was coiled " on the inside of the box, and went down out of the box through the cellar floor " and into the large ice-box down below;"

the coils, of which there was one for each faucet, were (Q. 34) in the bottom of the upper ice-box; of the course of the beer supply-pipes from the upper to the lower ice-box, he says (Q. 49). p. 30.

" They went down through the floor, and this ice-box down cellar was in the " hall way, and from the end of the ice-box there was a wine room, and this was " slabbed up, and the pipes go on the outside of the wine room down, and turned " off into the slabs and into the corner of the large ice-box, in the east corner of " the ice-box."

That the beer supply-pipes were visible in the cellar for about a foot and a half or two feet before passing into the wine cellar, and that it was "probably three feet" from where they entered the wine cellar to where they passed into the side of the lower ice box. The beer-supply-pipes, he says, had no covering on them, being entirely bare, and that at no time while he was at Meinhard's were they surrounded with rubber hose, nor was there any air or water passage or any communication between the upper and the lower ice box—other than the beer supply-pipes—the two ice boxes being entirely separate and distinct, there being no way in which the water could pass from the upper into the lower ice box. Stief's testimony upon this point is very clear, and is as follows:

" 59 Q. Did these beer-supply pipes have any covering on them? p 30
" A. No, sir.
" 60 Q. As they came through the floor and entered the wine cellar, could you " or not see the bare pipe?
" A. Yes, sir.

" 61 Q. State whether or not there was any rubber pipe or hose surrounding " these beer-supply pipes at any time while you were there?
" A. No, sir; they were perfectly bare.
" 62 Q. Were these pipes boxed in?
" A. No, sir.
" 63 Q. Perfectly bare, were they?
" A. Yes, sir, perfectly bare.
" 64 Q. State whether or not there was any covering upon or around these beer-" supply pipes from their leaving the upper ice-box until their entrance into the " lower ice-box?
" A. No, sir, there wasn't any.
" 65 Q. Was there any way in which the water from the upper ice-box could " get down into the lower ice-box?
" A. No, sir.
" 66 Q. Was there any air passage from the upper ice-box to the lower ice-box?
" A. No, sir.
" 67 Q. Was there any communication whatever between the upper and lower " ice-box?
" A. No, sir."

* * * * * * * * *

" 765 Re-D. Q. Where the beer-supply pipes entered the upper ice-box, was it " fixed so that no water could leak out?
" A. No, sir; there was no water could leak out.
" 766 Re- D. Q. So long as you tended bar at Meinhard's did you see any water " taken out of that upper ice-box other than dipping it out?
" A. No, sir.
" 767 Re-D. Q. Was there any possible way in which the water could have been " drawn from the upper ice-box into the lower ice-box?
" A. No, sir.
" 768 Re-D. Q. Was the bottom of the upper ice-box water-tight?
" A. Yes, sir.

* * * * * * * *

" 776 Re-D. Q. In going into the cellar for any purpose, were the beer-supply " pipes so exposed as to be readily seen?
" A. Yes, sir.
" 777 Re-D. Q. And was there ever any covering around these beer-supply " pipes?
" A. No, sir.
" 778 Re-D. Q. Of what material was the outside surface of the beer-supply ' pipes?
" A. Lead.
" 779 Re-D. Q. And could you see the lead pipes plainly?
" A. Yes, sir.

* * * * * * * *

" 782 Re-D. Q. When going into the cellar to get kegs of beer out of the lower " ice-box, could you, and did you, see these supply pipes?
" A. Yes, sir.
" 783 Re-D. Q. Were they always bare?
" A. Yes, sir.
" 784 Re-D. Q. Was there any drip of water into the lower ice-box from the " upper ice-box, or anywhere from the saloon?
" A. No, sir.

* * * * * * * *

" 788 Re-D. Q. Did any rubber pipe or hose extend up and cover the beer-sup-" ply-pipes from the lower ice-box into the upper ice-box?
" A. No, sir.
" 789 Re-D. Q. During the time you worked there, both as waiter boy and as " bar-keeper, did you ever know of those beer-supply-pipes being covered or boxed " in?
" A. No, sir."

Stief's credibility is in no way impeached. How, then, can you

disregard his most positive statements to the effect that there was no covering of any kind around the beer-supply pipes, nor any water or air passage from the upper to the lower ice-box, and that he had always to dip the water out of the upper ice-box. Had there been a water passage, he would not have had to dip the water out. Certainly he was in a position to and must have known, and he so testifies.

Speaking of the beer-supply pipes after they entered the lower ice box, he says (68 Q.):

" A. After they got in a corner they were attached by a rubber hose, and " this rubber hose run down to the barrels and fastened into the barrels; that " each beer-supply-pipe had its separate piece of rubber hose, one end of which was " fastened to the beer-supply-pipe, and the other, provided with a coupling for " coupling it onto the keg faucet."

It is impossible to read Stief's description of the construction and operation of Meinhard's apparatus without being convinced of its truthfulness. No one without a thorough knowledge of the apparatus could describe it as he does. He admits, as must be evident to your Honor, that it is not possible that the beer-supply pipes could have been surrounded with rubber hose, or that there could have been a water passage from the upper to the lower ice-box during the time he was there, without his knowing it (Ques. 88, 89, 90). So that he places himself in a position where there is no escape from the conclusion, either that he is telling the truth or deliberately falsifying. How can your Honor say the latter, when there is nothing whatever to base it upon? Even Meinhard styles him a good young man.

As to many things it is possible that one may be mistaken; but as to whether there was a water passage from the upper to the lower ice-box, I do not see how it is possible that Stief can be mistaken. He had daily to do with the apparatus for from six to nine months, during all of which time he says he dipped the water out—a thing which he would not have done had it been so arranged that it could run off itself; and what is more he says that Gunther, the bar tender who it is alleged is now in Germany, and Meinhard called his attention to the dipping out of the water in the upper ice-box:

" 41 Q. How often during each day did you dip the water out of the upper ice-" box?

" A. Two or three times, according to the way the weather was; how fast it " melted.

" 42 Q. Who instructed you how to get the water out of the upper ice-box when " you first commenced tending bar?

" A. Mr. Guenther, who worked there, told me how to take it out.

" 43 Q. Did Mr. Meinhard know how the water was taken out?

" A. Yes, sir.

" 44 Q. Did he ever call your attention to the water in the ice-box?

" A. Yes, sir.

" 45 Q. State what he said to you?

" A. He told me to go down cellar and fetch up another chunk of ice, and, if ' necessary, to dip it out every time we put in ice.

"46 Q. Was there any way in which the water could flow off through drip "pipes or other means?

"A. No, sir.

* * * * * * * * *

"93 Q. Have you any recollection of Mr. Meinhard ever having called your at- "tention to the amount of water in the upper ice-box and directed you to dip it "out, and to see thereafter that it was dipped out more regularly?

"A. He has drawn my attention to it and told me to keep it dipped out and "filled up with ice."

As to the coils in the bottom of the upper ice-box he says that they were there when he went there, and were still there when he left (Qs. 94, 95, 96)

"689 x Q. Were these coils taken out while you worked for Meinhard?

"A. No, sir.

"690 x Q. They remained in the upper ice-box all the time?

"A. Yes, sir."

Corroborating Schanz, who says that they were there when he went there in the fall of 1879, and contradicting both Meinhard and Cassebeer who, you remember, endeavored to make it appear that the coils were removed in 1878. If as Meinhard and Cassebeer say, the coils were removed in 1878, how could Stief know of them when he had no knowledge of the internal arrangement of the upper ice-box until the spring of 1879? Yet he describes them with great accuracy, and in a way that he could not do had he not seen them there.

His attention being called to defendants' model of the Meinhard apparatus, he said that at no time while he was at Meinhard's were the beer-supply-pipes surrounded with rubber hose as shown in that model, but on the contrary, they were, as repeatedly stated, always bare and uncovered:

"140 Q. During the time you worked at Meinhard's, did the beer supply-pipes "have any rubber upon them, such as shown by this model, 'Defendants' Exhibit "Meinhard apparatus model?'

"A. No, sir.

"141 Q. Did the beer-supply pipes enter the front of the lower ice-box as shown "in this model, 'Defendants' Exhibit Meinhard apparatus model?'

"A. No, sir.

"142 Q. During all the time you worked at Meinhard's, both as waiter boy "and bar-tender, did you ever see the beer-supply pipes covered with any rubber "hose such as represented in this model?

"A. No sir.

"143 Q. Is it possible, Mr. Stief, during the time you tended bar at Meinhard's "in 1879, that the beer-supply pipes from the upper to the lower ice-box could have "been covered with rubber hose such as shown in this model, 'Defendants' Exhibit "Meinhard apparatus model?'

"A. No, sir."

Stief's thorough knowledge of the apparatus and the accuracy of his testimony is established by the many points brought out during his direct and cross-examination, as for instance, his recollection of a change in the air pumps, which Meinhard admits was made; the rubber connections between the beer-supply pipes and

the keg faucets; the gas jet and its location in the cellar. And a long and tedious cross-examination not only utterly failed to in any way change or modify the statements of his direct examination, but in many respects strengthened them. It brought out the fact that once a week he had to clean the beer-supply pipes; that the coils were formed by coiling a portion of the beer supply pipes just before they were connected to the faucet in the upper ice-box, the coil and beer-supply pipes being continuous; that the beer-supply pipes went into the lower ice-box through one hole; that there were no tin pipes in the bottom of the upper ice box (x Q. 718); and that before putting in the ice he always had to put the water out.

A comparison of the statements contained in Raymond Stief's affidavit with the statements found in his present deposition tends greatly to confirm the truthfulness of his testimony, for there is no substantial conflict between them, and it is impossible to believe that if he were lying he could have retold the story without conflict, and this too when it appears that his affidavit was prepared by Mr. Cronise in reply to interrogatories propounded by him, and that when giving his deposition in this case he had not read his affidavit, nor had he read it since signing and swearing to it.

Raymond Stief's testimony confirms Schanz's testimony and contradicts that of Meinhard and the other of the defendants' witnesses. If he is worthy of belief, then the inevitable conclusion is that the Meinhard apparatus never had a passage from the upper to the lower ice-box, formed either by surrounding the beer supply pipes with rubber hose, or otherwise.

If, as I contended, Schanz's testimony creates at least a doubt, do not Stief's and Schanz's testimony create a conviction as to the non-existence of the Meinhard apparatus having an air and water passage from the upper to the lower ice box?

In passing from a consideration of Stief's testimony I will call your Honor's attention to an attempt on the part of Meinhard to interview the witness Raymond Stief with the view of securing his assistance for the defendants, even going to the extent of calling at his home (x Q. 299-300, Re-D. Q. 842-852). Meinhard keeps constantly appearing in that manner. It seems that he was instrumental in securing almost every witness on the part of the defendants, as well as securing the affidavits that were used in opposition to the motion to re-open the Welker case, and yet he has asserted and would have the Court believe, that he takes no interest in this controversy. It may be that it is barely possible that his present interest is prompted by his desire—and it may be he regards it as a necessity—to substantiate the false statements which he uttered in the Welker case. Without speculating as to the reason, the fact is that he thoroughly permeates the defendants' case; as much so as if he were the real defendant.

The testimony of both Schanz and Raymond Stief is confirmed by the testimony of Otto Hahn.

Hahn (~~Comp. Rec., p. 114~~) resides in Chicago, is 26 years of age, and the janitor of one of the largest buildings in Chicago; he, like Schanz and Raymond Stief, having deserted the bar business, and turned his attention to more honorable pursuits. He left Rochester in 1881, since which time he has resided in Chicago; so that all the information he has of Meinhard's apparatus must have been acquired before that time.

He commenced tending bar for Meinhard in 1877, continuing for about four years off and on until he went to Chicago. He was employed (Q. 11) "mostly in the hall bar, sometimes in the saloon bar:

" 12 Q. Did you at times tend bar in the saloon proper?
" A. Yes, sir.
" * * * * * * * *
" 25 Q. You may state whether or not you used this beer-drawing apparatus of " Meinhard's at different times?
" A. Yes, sir."

When tending the saloon bar, he used the beer drawing apparatus. It was always his duty to get the kegs of beer out of the ice box in the cellar for the bar in the hall, and at times, especially when he was tending bar in the saloon, he tapped the kegs in the lower ice-box from which the beer was drawn up into the saloon.

Schanz was the saloon bar-tender during a part of the time when Hahn was at Meinhard's, and Hahn says that Schanz tended to the dipping out of the water from, and the putting in of the ice into, the upper ice-box; that he saw Schanz do this, and that there was no other way for the water to get out of the upper ice-box.

" 27 Q. Who did put the ice in the upper beer cooler?
" A. Mr. Schantz.
" 28 Q. Do you know how the meltings from the ice, that is, the ice water, was " gotten out of the upper ice cooler?
" A. Yes, sir; it was dipped out.
" 29 Q. Who attended to the dipping of the ice water out of the upper ice-box?
" A. Mr. Schantz.
" 30 Q. State whether or not you ever saw Schantz dip the ice out of the upper " ice-box?
" A. Yes, sir; several times.
" * * * * * * * *
" 33 Q. And during all the time you worked for Meinhard did you frequently " see them dipping the water out of the upper ice-box?
" A. Yes, sir.
" 34 Q. Was there any way, so far as you know, for getting the ice water out " of this upper ice-box other than dipping it out?
" A. No, sir."

In describing the apparatus, Hahn says (17 Q.):

" It was a square ice-box, with four faucets running from it and coils of pipe " in the box from each faucet, and the pipe ran straight from the ice-box through " the floor into the cellar, and into the wine cellar and inside of the lower ice-box;"

that there was a coil in the bottom of the upper ice-box for each beer supply-pipe; that onto the ends of the beer supply-pipes was secured a rubber hose " about a yard or a yard and a half long;" the opposite ends of which were connected by a coupling to the beer keg faucets (38 41 Q.).

He is positive in his statements that the beer supply-pipes as they came through the floor and passed down over and onto the side of the lower ice-box, could be plainly seen in the cellar; that they had no covering of any kind upon them, being always bare, and that there was no communication or passage for either water or air from the upper to the lower ice-box.

" 42 Q. As the beer-supply pipes came through the floor and into the cellar, " could they be plainly seen in the cellar?
" A. Yes, sir.
" 43 Q. You may state whether or not these beer-supply pipes as they came " through the floor and into the cellar had any covering upon them.
" A. They did not.
" 44 Q. During all the time you worked for Meinhard, from 1877 to 1881, was " there any covering upon the beer-supply pipes coming from the upper ice-box to " the lower ice-box?
" A. No, sir.
" 45 Q. What kind of pipes were these beer-supply pipes?
" A. Lead pipes, I think.
" 46 Q. You may state whether or not these lead pipes were always bare?
" A. Yes, sir.
" 47 Q. Was there any communication or passage of any kind whatsoever from " the upper to the lower ice-box through which water or air could pass from the " upper to the lower ice-box?
" A. No, sir."

He correctly locates the upper ice-box, the lower ice-box, the wine cellar and the gas jet, showing that he must have been pretty familiar with the apparatus.

He noticed the coil in the bottom of the upper ice-box, and that they were there when he left Meinhard's in 1881.

" 71 Q. Were the coils in the bottom of this upper ice-box when you left Mein- " hard's in 1881?
" A. Yes, sir.
" 72 x Q. And up to the time of your leaving Meinhard's in 1881, was there or " had there been any covering of any kind whatsoever upon or around the beer " supply- pipes from the upper to the lower ice-box?
" A. No, sir."

This man, like Shanz and Raymond Stief, was in a position to, and must have known, of the construction and operation of this apparatus. He was not so familiar with it as they, because he only attended the saloon bar off and on. But as to the lower ice-box, he must have been as familiar as any of them, having to go there during a period of four years, off and on, both when he was tending bar in the hall and in the saloon. It is impossible that Hahn, any more than Schanz and Raymond Stief, could be mistaken as to the way in which the water resulting from the melting of the ice was taken out of the upper ice-box; but, like them,

says it was always dipped out, and there was no other way to get it out.

His attention being called to the model of the defendants' apparatus, he stated, in the most positive manner, that during the time he worked at Meinhard's there was no rubber hose around the beer-supply-pipes, as shown in that model, but that, on the contrary, they were always bare and uncovered, and could be seen by any one going into the cellar:

"75 Q. Referring to Defendants' Exhibit 'Meinhard Apparatus Model' state "whether during the time you worked for Meinhard there was any rubber cover-"ing around the beer supply pipes as shown in this model?
"A. No, sir.
"76 Q. Did you ever see any such covering around the beer supply pipes?
"A. No, sir.
"77 Q. Was there ever any such covering around the beer supply pipes?
"A. No, sir.
"78 Q. Were these pipes always bare?
"A. Yes, sir."

He says that during all the time he worked for Meinhard the saloon was always open on Sundays, and beer drawn from the apparatus in question.

The name of this witness was given to the complainant by Schanz, and finding that he was in Chicago, Schanz was employed to go there and arrange with him to go to Rochester for his examination; and out of this much is endeavored to be made by the defendants. It may be dispensed with as unworthy of notice, as your Honor can satisfy yourself by a reading of Hahn's testimony, which shows that nothing took place between himself and Schanz other than to arrange for his coming to Rochester; that he had no talk of any kind with Schanz with reference to the apparatus nor with any one until his arrival in Rochester. It was far more desirable that Hahn should come to Rochester and be examined there rather than that counsel should go to Chicago for that purpose, and consequently an arrangement was made whereby Hahn was to be paid his travelling expenses and for the loss of his time, if he would come, which he did. I hardly think that such a thing will justify your Honor in discrediting Hahn. Apart from that, Hahn's testimony stands almost without criticism.

His cross-examination developed nothing to the advantage of the defendants; but as with Raymond Stief, developed much to strengthen the statements of his direct examination; as for instance the positive statement that the rubber hose connecting the beer-supply pipes with the faucet were at one end secured to the beer-supply pipes by slipping them over and wiring, and the opposite end provided with couplings for coupling on to the keg faucets (x Q. 317 324) that there were no tin pipes in the bottom of the upper ice-box, that the gas jet was so located that anyone going into the cellar and turning up the gas could plainly see the beer supply pipes; that he, as well as others, was in the habit of turning up the gas

when he went into the cellar (x Q. 386-390): so, that had the beer-supply-pipes been surrounded with rubber hose the rubber hose must have been seen by those who went into the cellar.

It is, indeed, strange if the beer-supply-pipes could not be seen in the cellar, especially when the gas was turned up, that they did not call some of Meinhard's old employees to show that although they went frequently into the cellar and into the lower ice-box, they did not see the beer supply-pipes as they came through the floor and passed over and into the side of the lower ice box.

George J. Englert, another of the witnesses examined in rebuttal on the part of the complainant as to the Meinhard apparatus, testifies, that he is 28 years old, resides in Rochester, and is at present employed as a driver. That he commenced working for Gilbert & Meinhard in 1876 (Q. 3), p. 108.

" that is, helping out. In 1877 " (April), " I went to work steady for them by the week,"

and continued (Q. 6) " until January, 1878." After January, 1878, he " helped them out," off and on, so long as Meinhard remained at Falls Field. When employed there steadily, from April, 1877, until January, 1878, he was second or assistant saloon bartender to Felix Guenther (Q. 11 and 12), who was the regular saloon bartender. p. 109.

That he was in a position to and must have known as to the construction and operation of the Meinhard apparatus is clearly shown by a reading of his deposition.

He proved an excellent witness, and I urge your Honor, long as his deposition is, to read it carefully.

He was at Meinhard's when the apparatus was put in, and he says it was put in by Neuhart.

In decribing the apparatus (Q. 17) he says : p. 109

" There was a little box in the bar room floor back of the bar, and there was " four faucets to it and four pipes connected from there which were coiled on the " inside and from there they ran down through the floor and slanted over " through the wine room into the ice-box in the cellar ;"

that the beer supply-pipes were connected to the beer keg faucets by a rubber hose, one end of which was slipped over and wired onto the beer-supply pipes and the other end, provided with a coupling for coupling onto the keg faucet (Q. 20–23); that there was no other rubber hose in connection with the beer-supply pipes other than these short connecting pieces, the beer supply pipes being bare and uncovered in their passage up from the upper to the lower ice-box (Qs. 24-25).

It was Englert's work, as assistant bartender, to put the ice into the upper ice box and to dip the water out; this, he says, he did about three times a day, and that there was no other way to get

the water out, there being no means of running it off, either into the lower ice-box or anywhere else.

p. 111.

"38 Q. During the time you worked steadily at Meinhard's, whose duty was it "to put the ice in the upper ice-box?

"A. It would be my work.

"39 Q. And did you do that continuously?

"A. Yes, sir.

"40 Q. How often each day would you put the ice in?

"A. I used to dip the water out in the morning and put in two pails of ice, "and about noon before I would go to dinner I would take out what water I could "and fill it up again, and nights I would do the same, and about seven o'clock, so "as to have the beer cool for the people at night.

"41 Q. And that was your daily duty, was it?

"A. Yes, sir.

"42 Q. You say you dipped the water out of the upper ice-box; what water "was it that you dipped out?

"A. Where the ice melted; the ice water.

"43 Q. Was there any way of getting the water out of the upper ice-box other "than dipping it out?

"A. No, sir.

"44 Q. Was there no way in which you could let it run off?

"A. No, sir.

* * * * * * * *

"47 Q. Was this upper ice-box open so you could get the ice in and the water "out?

"A. There was a cover to it."

As to there being no rubber hose or other covering around the beer-supply pipes, or water passage of any kind, from the upper to the lower ice box he is just as positive as the other of the complainant's witnesses, as a reading of his testimony shows:

p. 112

"51 Q. Was there any covering around them?

"A. No, sir; the pipes were bare.

* * * * * * * *

"54 Q. How was it fixed where these pipes passed through the bottom of the "upper ice-box?

"A. They were soldered around to keep the water around the coils and ice.

"55 Q. So that no water could leak out of the ice-box where the beer-supply "pipes passed out?

"A. No, sir.

* * * p. 113 * * * *

"68 Q. Did any water come from the upper ice-box into this lower ice-box?

"A. No, sir.

"69 Q. Was there any connection or passage way between the upper and lower "ice-box for water or air?

"A. No, sir.

"70 Q. Had there been any rubber hose or other covering surrounding the beer "supply-pipes from the upper to the lower ice-box, would you have seen it?

"A. You had to see it if they were there, but they were bare.

"71 Q. They were bare all the time, were they?

"A. Yes, sir.

"72 Q. From the time this apparatus was put in there by Neuhart and Barr, as "you have stated, about the spring of 1877, until you left there in January, 1878, "were the beer supply-pipes always bare?

"A. Yes, sir.

"73 Q. During all that period was there any way by which the water from the "upper ice-box could possibly get down into the lower ice-box?

"A. No, sir."

In describing the course of the beer supply-pipes, he says that they passed through one opening in the floor and one opening in the side of the ice-box, and that they could be plainly seen in both the cellar and the wine cellar (57-61 Q.).

Assuming that they could be seen, he must have seen them every day, as it was a part of his daily duties to tap the kegs in the lower ice-box and make the connection with the beer supply-pipes leading to the upper ice-box (63 Q.).

Having thus described the construction and operation of the apparatus, he says that no change was made in the apparatus from the time it was put in until he left in January, 1878, other than a change of the air pump in 1878 (78, 79, 80, 81 Q.). That when he left there in January, 1878, the coils were still in the upper ice-box, up to which time there was no provision for drawing off the water from the upper to the lower ice-box (85, 86, 87 Q.).

He corroborates Schanz, Raymond Stief and Hahn, as to the location of the gaslight in the cellar, of which he says (93 Q.):

p. 114

"Used to have a small light, and when we would run down we would turn it "up and light the candle to go into the ice-room to tap beer,"

and that the beer supply-pipes could always be seen when the gas was burning, he having seen them many times, and that they were always uncovered.

Englert was discharged in January, 1878, and he gives the reason for his discharge, and it is of such a character as would be likely to distinctly impress itself upon his memory:

p. 115.

"110 Q. You say you stopped working steadily for Gilbert & Meinhard in "January, 1878; how did you stop working steadily for them at that time?

"A. I was discharged.

"111 Q. Why were you discharged?

"A. Well, it was on Wednesday night that the Bowling Club, they used to "roll on Wednesday night, and the beer was empty and I run down cellar to tap "some beer and turned up the gas, and during that time I heard them all hollering "up stairs and I went up to see what they were hollering about, and there was a "big snow storm and we looked out and the street car was turned over in front of "the place, and I run down so Meinhard wouldn't see me and tapped a keg of beer "and turned it on and when I turned it on the candle went out and the beer flew "all over and I had a pipe burned off, and Mr. Meinhard came down and told me "what he would do and would make me pay for it and told me to get out of the "place, and I went up stairs all wet. I shut the beer off first and went up and put "on my coat and hat and went home and Friday I went back and got my pay.

"112 Q. Where was it that the beer-supply-pipe had been burned off?

"A. Above the gas burner in the cellar.

"113 Q. How did it happen that it was burned off?

"A. I turned on the gas and the burner was below the pipe, and the pipes were "empty then and no beer in the pipes, and I staid up a few minutes too long, and "when I came down I went in the ice-box and knocked the faucet in the beer "and coupled it on and opened the faucet and when I got out the beer was flying "all over."

If what he says took place, it is a demonstration that there was no rubber hose or covering around the beer-supply pipes in January, 1878, and he distinctly says that there was not. The happening of such a thing would undoubtedly impress itself upon his

mind, so that he would have a very distinct recollection of it, even years afterwards. It will be difficult for anyone to believe that Englert manufactured that story. We have it from other witnesses that the conditions were such that such a thing would have happened had the light come directly under the beer-supply pipes.

After his discharge he was employed off and on, on extra occasions, so long as Meinhard remained at Falls Field, during all of which time he does not know of any changes having been made in the apparatus; that he frequently saw into the upper ice-box, and that the coils were still there, and he saw the bartender dipping the water out (Q. 144, 145, 146, 147, 148.)

Englert assisted Meinhard in moving from Falls Field to Germania Hall. He says he was at that time employed in the Union Bottling Works, and he was told to go with his team and aid Meinhard in moving, which he did; that he then saw Meinhard's apparatus, it having been taken out; that the beer supply-pipes, which lay on the floor, were uncovered, and that the coils were still connected to the beer supply-pipes.

His attention, as well as the attention of the other witnesses, was called to the defendants' model of the Meinhard apparatus, and he, like them, states most positively that there was no rubber hose around the beer-supply-pipes, as shown in that model.

Again I say you will find Englert to be a most remarkable witness. He tells a straightforward and fairly consistent story, and one that is in perfect accord with Schanz, Raymond Stief and Hahn. It would be utterly impossible for a man of Englert's calibre to concoct such a story and testify to it as he has. Your Honor cannot disbelieve him, and had you seen him when giving his testimony I know you would have been impressed, as I was, with his truthfulness. One thing is certain, his story is in accord with the other of the complainant's witnesses, and in direct contradiction of Meinhard's.

His cross-examination developed nothing that I need refer to. There are some very slight inaccuracies, but only such as you will find in all depositions of that length as to questions of fact transpiring years before. If your Honor can spare the time to read his deposition throughout, no argument will be required to satisfy you as to its truthfulness.

How will this witness be disposed of, and he must be disposed of—yes, destroyed—as well as Schanz, Raymond Stief and Hahn, if you are going to hold that the Meinhard anticipation is established "beyond a reasonable doubt." Certainly the books contain no reported case where the Court has ever held an anticipation established in the face of such testimony as that given by the complainant's witnesses in rebuttal.

The remaining witness, in rebuttal, as to the Meinhard apparatus, is John V. Englert.

In the fall of 1881, Englert was delivering beer for the Bartholomay Brewing Company, and delivered to Meinhard in the months of August, September and October of that year. He says (Q. 10), that he slid the beer from the street down into the cellar and then went into the cellar and put the kegs into the lower ice box of the apparatus in question.

f. 243.

"11 Q. After sliding the beer into the cellar, what then did you do?
"A. I had to light the gas in the cellar so I could see the box. I lit the gas so "I could see from the slide to shift the beer to the south, in order to get it to the "ice-box towards the south-west corner."

As to the location of the gas light, he says (13 Q.):

"It was right next to the pipes, the pipes coming down from the box back of "the bar";

that is, the upper ice-box.

f. 243.

"14 Q. How many pipes were there coming down from the box back of the "bar?
"A. Three or four.
"15 Q. And these pipes came right down near the gas light, did they?
"A Yes, sir; right near the gas light.
"16 Q. And where did these pipes go?
"A. They made a turn into the wine cellar, and from the wine cellar they went "into the ice-box.
"17 Q. And after they got into the ice-box what then was done with them?
"A. Then there was a connection with a rubber hose, I couldn't judge how "long the hose was—a foot or eighteen inches or two feet, to make the connection "with the faucet to the beer keg or barrel."

It is conceded that Englert in taking the beer kegs from the place where they were slid in the cellar to the ice-box had to pass and re-pass the beer supply-pipes where they came down through the floor and pass over and into the lower ice-box, and Meinhard says, that if he or anyone else going into the cellar had their eyes open they would have seen the beer supply-pipes. Englert delivered beer there (Q 21), "two and three times a week," so that he must have passed and re-passed these beer supply pipes many times on the different occasions of his delivering beer there.

When asked if he could see the beer supply pipes in the cellar he answered (Q. 22):

f. 244

"I couldn't help but see them because they were right next to the light and I had "to see them. They were right next to the gas jet;"

and he says in the most positive manner, that during the time he was passing in and out of there and saw the beer supply-pipes, there was no covering around them.

"23 Q. Was there ever any covering upon or around these beer-supply pipes?
"A. No, sir.
* * * * * * * *

f. 245

"29 Q. And so long as you continued delivering beer at Meinhard's were all of "these beer supply-pipes always bare?
"A. Yes, sir."

According to Englert's testimony Meinhard cautioned him not to let the light come in contact with the beer supply-pipes.

"24 Q. What, if anything, did Mr. Meinhard ever say to you about these beer-supply pipes?

"A. Well, most every time he came down he would say, 'John, look out that you don't shift this jet here on account of these pipes, so you don't burn them.' He would say: 'Be very careful about these pipes.'

"25 Q. Was this a swinging gas bracket?

"A. Yes, sir; a swinging gas jet.

"26 Q. And he cautioned you to be careful that this light didn't burn the pipes?

"A. Yes, sir."

It should be noted that this witness's direct examination was confined to the cellar and lower ice-box located therein, and having special reference to questions of seeing the beer-supply-pipes and whether or not they were covered. His cross-examination, however, was chiefly directed to the upper ice box and matters in no way referred to on his direct examination, and as to which he professed no knowledge. He answered to his best recollection, and in some respects he is in error, but that in no way changes the questions as to his having seen the beer supply pipes and as to their being covered or uncovered, for as I have stated, Meinhard admits that anyone going into the cellar who took the trouble to look around could see the beer supply pipes. Englert was there three times a week and passed and re-passed the beer supply pipes many times on each occasion.

There you have the facts on the part of the complainant in rebuttal as the non-existence of the Meinhard apparatus with rubber hose surrounding the beer supply pipes. I leave them with you in the belief that it cannot be said that the defendants have established the existence of the alleged Meinhard apparatus "beyond a reasonable doubt."

Keeping that well settled rule of law in view, you will have no difficulty in disposing of the Meinhard as well as the Boehm alleged anticipations. The doubts—for they exist beyond question—are fatal to the defendants.

Mr. Bartholomay, President of the Bartholomay Brewing Company, of Rochester, New York, furnishes us with a most convincing piece of testimony as to the improbability of Meinhard ever having had in his saloon an apparatus such as he now claims. He was in the habit of visiting Meinhard at Falls Field, and knew of his apparatus, but he never knew, nor was given to understand, that it had any resemblance to the Gordon.

He says that prior to seeing the Gordon apparatus in Magin's saloon, he had never either seen or heard of such an apparatus:

"34 Q. And before seeing that apparatus of Mr. Magin's you never had seen such an apparatus anywhere else?

"A. No, sir, I had not.

"35 Q. Nor had you heard of a similar apparatus?

"A. No, sir, I had not."

But afterwards he highly commended the Gordon apparatus to Mr. Meinhard and advised him to examine it and put one in like

it. Neither then nor afterwards did Mr. Meinhard ever suggest to Mr. Bartholomay that he had, or ever had had, a similar apparatus or one in any way resembling it.

Is it possible to believe that a man situated as Mr. Bartholomay was, would not have known or heard of the alleged Meinhard or Boehm apparatuses if they ever existed as now claimed? If not conclusive, is it not persuasive reasoning?

But that is not the only strange thing in connection with the alleged Meinhard and Boehm anticipations. It is equally strange that throughout the United States, the only two cases of alleged anticipation discovered are in Rochester, where the inventor and patentee and the complainant reside, and where the Gordon apparatus was first introduced into use. From no other of the great beer centres of the world comes so much as a suggestion of the prior existence of any such structure. From St. Louis they bring the description of an apparatus which is totally different in principle from the Gordon, lacking, as it does, the essential features, both of principle and construction, which made the Gordon apparatus a success, and without which the St. Louis is a failure.

The alleged Boehm anticipation is brought into this case by stipulation from the Welker case (stipulation printed at page 11 of defendants' argument.) The case as to that defense being here precisely the same as in the Welker case, I submit it upon the very able brief of my brother Selden, submitted in the Welker care, supplemented with the few suggestions I have made through the course of this argument

As to the Boehm defense, it is in effect a re-argument of what was before you in the Welker case, and I could say nothing more than what was then said as contained in the brief. Nor should I feel justified in rearguing it at length, in view of the suggestions heretofore made by your Honor as to the insufficiency of that defense.

Mr. Selden said:

"The defendants have cited no prior patents or publications as anticipating the invention described and claimed in the Gordon patent.

"The only defences put forward by the defendants relate to the first claim only of the Gordon patent, and consist of a description introduced by stipulation, an apparatus for drawing beer, used in St. Louis, Mo., and with regard to which it need only be said that it did not contain the *cold-air passage* between the ice-boxes of the plaintiff's patent, and a case of alleged prior use in the saloon of one Boehm, in Rochester. The defendants have endeavored to show by their witnesses that there was a *cold-*

air passage in the apparatus used by Boehm, but as these witnesses are shown to be violently prejudiced, and contradict each other about the pipe which they claim formed the cold-air passage, and are themselves contradicted by the plaintiff's witnesses Mura and Bush, who testify in effect that there was no *cold-air passage* in the device at all, it must be held that the defendants have failed to sustain the burden of proof resting upon them or to have overcome the presumption of novelty arising from the grant of the patent.

"Further, the apparatus used by Boehm was, acccording to the testimony of Boehm himself, a failure; its use was discontinued, and it was finally thrown out at the very time that Gordon was successfully introducing the patented invention. (Boehm, x Q. 47–50.) Boehm then for a time drew his beer directly from the keg, but subsequently he put the Gordon invention into his saloon. While the defendants claim that Boehm's apparatus was the same as Gordon's, they furnish no explanation of the singular fact that the patented invention has gone extensively into practical use, while the alleged anticipating device was confessedly a failure and abandoned as impractical. Boehm is judiciously indefinite in his testimony as to the details of the construction of his apparatus, and evades the question as to whether his trade fell off in consequence of the use of it. (x Q. 55–58, 113–121.) The statement of his account taken from the books of the Bartholomay Brewing Company shows, however, that his trade was lessened by the use of his apparatus, and increased when he took it out. (See Plaintiff's Exhibit Boehm Account.) Boehm sold the Bartholomay Company's beer exclusively (x Q. 42.) 649-653

"Under these circumstances, it may be well claimed that Boehm's apparatus, whatever its construction, was nothing more than an abandoned experiment, insufficient to anticipate a patented invention.

"And further, if Boehm did have a cold-air passage between the upper and lower ice-boxes in his apparatus, it is singular that Wolf, who knew all about it, should have put a beer cooler into Magin's saloon in 1879 without this feature, which appears to be indispensable to the success of the device. Mr. Wolf was the party who issued the call for the meeting of the saloon-keepers, at which the defence association was organized (~~Welker, pp. 142, 143.~~) Mr. Wolf's interest in the matter seems to have been caused by the fact that the success of the Gordon invention was injuring his business.

"Schaub, the principal witness for the defence, is shown to be violently prejudiced against the Gordon invention (x Q. 128, 135.) His business had been injured also. He is also shown to have infringed the Gordon patent (deft's record, p. 31.) 580-655

"Kleinhanz was Boehm's nephew, and bar-tender (x Q. 61). Selbig is shown to be entirely unworthy of confidence, having failed to produce the drawings which were rejected by defend-

ant's counsel (x Q. 118–141), and having been forced to admit that the drawing he offered in evidence did not agree with his description of the Boehm apparatus (x Q. 107, 117.) He was a boy of eighteen in Schaub's employment when the alleged anticipating apparatus was constructed.

"A comparison of the drawings introduced by defendant's witnesses will show clearly the unreliable character of the evidence. No two of them agree as to the details of the apparatus. No part of the Boehm apparatus is produced. What its exact construction was must be conjectured from the contradictory evidence of the most ignorant and prejudiced witness. All of them concede it was a failure, and had to be thrown out, at the very time the Gorden invention was coming rapidly into extensive use.

"Take as a sample of the whole testimony, the statements of the various witnesses as to the galvanized iron pipe, which they claim formed a cold air passage between the upper ice boxes in Boehm's apparatus. Schaub says the pipe was three feet long, oval, six inches by four inches, and connected below the floor with a wooden pipe five inches by five inches inside (Q. 8.) Kleinhanz says it was four and a half to five feet long (Q. 10), and between three and three and a half inches "across" (24–28 Q.) Selbig says it was four or five inches in diameter (x Q. 63). Rosch says it was about five or six feet long (Q. 17), and about two inches or two and a half wide (Q. 19), and Boehm states that the pipe was about five feet long (Q. 11), but judiciously limits the diameter to such dimensions as would permit the beer-supply pipes to pass through it, remembering that he had made no alterations in the saloon since the building was first put up (x Q. 85-86), and that an examination of the floor might disclose that there was no opening in it large enough for a cold-air passage. (See evidence of plaintiff's witness, Bush.)

"This confusion among the defendant's witnesses is rendered utterly hopeless by the testimony of plaintiff's witness Mura, who is entirely disinterested, and who swears in unqualified terms that there was no pipe or tube constituting a cold-air passage in Boehm's apparatus at all. Mura had every opportunity to be-acquainted with the apparatus, having done all of Boehm's carpenter work from 1875 to 1881, and having built the ice-box originally and changed it after the apparatus was abandoned. No change had been made in the floor of the saloon, and at the time the device was taken out, there were only two small holes through the floor, neither of which was large enough to have permitted the use of a cold-air passage in the apparatus. In these statements Mura is confirmed by Bush, who made a careful examination of the floor in November, 1882. There never was any cold-air passage in Boehm's apparatus, and this accounts for its utter and entire failure. It is impossible to believe that Boehm's apparatus would have failed, if it had contained the cold-air passage, which has given the Gordon invention its success.

"A weak attempt is made by the defendants to prove a case of prior use by the witness Meinhard, but, as he admits that there was an open hole in the top of his lower ice-box (xQ. 88–9.), the matter need not be further discussed."

And in reply to the brief of defendant's counsel Mr. Selden said:

"The infringement of the Gordon patents in these cases is admitted by the defendants, so that the controversy is narrowed down to the single question of the novelty of the invention.

"The defendant's brief is so full of false or inaccurate statements that it hardly merits any reply beyond pointing out the misrepresentations contained in it. Thus on page 8 and 9 of his brief, the defendant's counsel deliberately falsifies the record, and states that Welker 'put in his apparatus in April, 1879; and builds on this falsehood argument that Gordon borrowed the invention from Welker, when the fact is that Welker did not put in his apparatus which is admitted to infringe three of the claims of the Gordon patent, until the spring of 1881, two years after the date of Gordon's invention (June, 1879) and the evidence shows that Gordon did not see Welker's beer cooler until after he had made the application for the patent, April 23, 1881. Welker says (~~defendant's record, p. 136~~), that he commenced putting in his apparatus 'about the 10th or 12th of April, 1881,' and completed it 'on the 17th of May, 1881,' and that Gordon first saw his apparatus 'about the end of April, 1881,' (~~p. 138~~). Gordon says (~~Pliff's Rebuttal, p. 5~~), that his first visit to Welker's saloon was after he had applied for his patent, April 23, 1881, and that he made the invention and put the first apparatus into Magin's saloon, about the first of June, 1879 (~~p. 2~~). Such a deliberate misrepresentation of the testimony should render the whole brief unworthy of any credit whatever. The first position of the defendant that Gordon had licensed Welker being found to be untenable—it appearing clearly that Gordon did not know or have any communication whatever with Welker until after the application for patent was made, resort is now had to the above gross misrepresentation to destroy the plaintiff's rights under the patent. Further comment on this branch of the case is entirely unnecessary.

Similar misrepresentations are found in other places in defendant's brief. Thus (~~p. 4~~) it is stated that Selbig helped Schaub 'to place the same apparatus in other saloons,'—that is the same apparatus that Boehm used. The fact, however, is, that Schaub himself on cross-examination admitted that none of the beer-coolers which he claims to have put into other saloons contained the Gordon invention, and that all these devices were abandoned as useless. The utter worthlessness of Selbig's testimony was

pointed out in the oral argument. It is submitted that no witness who makes two drawings of an alleged anticipating device, which are rejected by the defendant's counsel as wrong, is entitled to any credit, especially as when in this case the third drawing which the witness offers in evidence, is shown to be inconsistent with his verbal description of the apparatus. See Selbig's cross-examination.

"Again, ~~on page 5~~, it is stated that Boehm's apparatus was 'identical with the Gordon invention,' when the fact is, that, on defendant's own showing, the apparatus contained the coolers in the upper ice-box, which are not in Gordon's, and which are clearly shown to have rendered the device impracticable. That the coolers were worse than useless, is shown by the fact that after Boehm had abandoned the Schaub apparatus—Gordon in the mean time having taught him how to build a practical device for the purpose—he omitted the coolers in the apparatus like Gordon's, which he put in his saloon in June, 1883. (~~Deft.'s Record, p. 168~~).

"Again, ~~on page 5~~, defendant's counsel states that Boehm's apparatus 'was fully operative and gave entire satisfaction,' which statement is entirely irreconcilable with the admitted facts, that Boehm abandoned its use and went back to drawing beer direct from the keg, until Gordon had instructed the public how to build a suitable apparatus for the purpose, and the same having become widely known, was adopted by Boehm and other saloonkeepers in infringement of the patent.

"Again (~~p. 7~~), it is stated that Boehm used the Schaub apparatus 'from '77 to '81, inclusive,' although it is clearly shown by defendant's witness, Mura, who states his dates with accuracy from reference to his books, that he tore out the old ice-box from Boehm's saloon in February, 1881. (~~Pff.'s Rebuttal, p. 25~~). The principal season for the use of these devices is in the summer, or during warm weather, and the defendant's counsel evidently intended to give the court the impression that Boehm used his old apparatus during the summer of 1881, which is manifestly a false statement. Boehm is so clearly shown to have erred in stating that the use of the Schaub apparatus did not injuriously affect his trade, by the production of his account with the Bartholomay Brewing Company, which clearly shows that his sales of beer were reduced when he commenced to use the Schaub apparatus, and increased when he abandoned it, that his testimony presents a fair case for the application of the maxim *falsus in uno, falsus in omnibus*. The defendant's witnesses as to the Boehm or Schaub apparatus are all of them ignorant and apparently unscrupulous men, most of them infringers and all combined together to testify to something which would render the plaintiff's patent invalid. They are personally interested in opposition to the patent, and would be injured by a decree affiming its validity. But the equity of the cases is clearly on the side of the plaintiff, as neither of the

defendant's ever borrowed anything from Boehm's apparatus, which was not adopted by any other saloonkeeper, and produced no effect whatever in the trade. In fact, under the circumstances of the case, the longer the Boehm apparatus was used, the stronger becomes the presumption that it was not the Gordon apparatus, for the latter was immediately recognized and adopted by people engaged in the saloon business as a valuable improvement, while the Boehm device not only was not used by any other parties, but was finally abandoned by Boehm himself.

It is clearly shown that McKay copied Gordon's apparatus from Magin's saloon, and Welker did not make his until the Gordon invention had become well known and was being generally introduced. It is not shown that any of the defendants borrowed any ideas from the St. Louis apparatus, and, as a matter of fact they did not know anything about it until after the commencement of the suits. It does not contain the cold-air passage of the Gordon patent, and therefore requires no further comment. In view of the fact that Meinhard had given up the use of his rubber tubes, which did not constitute a cold-air passage, and had gone back to drawing beer directly from the keg. (~~Defendants' Record, p. 9~~) this device cannot be considered as anything more than an abandoned experiment. Besides, his ice-box had so large a hole in it (~~p. 11~~), that it can hardly be considered as an ice-box at all. The Gordon invention is not found in the Meinhard apparatus. The defendants have taken nothing from Meinhard, but have appropriated the advance in the art made by Gordon.

"It is shown that Wolf knew all about Meinhard's and Boehm's devices (Meinhard, 112 x Q.), and Boehm (90 x Q.), and yet in the spring of 1879, we find him putting in a beer-cooler for Magin, in which there was no cold air passage, but the beer supply-pipes were wound with hair-felt. It was the failure of this device which caused Gordon to make the invention in controversy. If either Meinhard or Boehm had had the cold air passage, the feature which has secured the success of the Gordon invention, it is inconceivable that Wolf should have failed to put it into Magin's saloon. And when the failure of both Meinhard's and Boehm's devices, and the testimony of the plaintiff's witnesses Mura and Bush with regard to the latter are considered the conclusion becomes irresistible that the cold air passage was original with Gordon. Mura, an entirely disinterested witness, who says it would have been money in his pocket if he had never done that work for Boehm (48 Q.), says: '40 Q. State whether or not there was at any time, in this apparatus, a cold-air-passage or connection between the upper and lower ice-box? A. No; no more than little lead pipes that ran to the beer kegs.' And Bush (~~Piff's Rebuttal, p. 32~~), testifies that he examined the floor in Boehm's saloon in November, 1882, and there was no evidence of the floor having been repaired. Taking the whole testimony on

both sides into consideration, it must be held that the defendants have failed to produce evidence sufficiently strong to overcome the presumption of novelty arising from the grant of the Gordon patent. The defendants' counsel has not cited any authorities in his brief, and, for the best of reasons, that no case can be found in which the courts have held a patent invalid on evidence of a character similar to that produced by the defendants in this case. Every doubt must be resolved against the defendant. (*Herring* v. *Gage*, 14 Blatch., 293); In *Putnam* v. *Hollender*, (19 Blatch., 48), an alleged prior invention which was produced in court and had been used two years, was held to have been an abandoned experiment. In *Hicks* v. *Otto* (19 Federal Reporter, 749), the failure of the alleged anticipating structure to come into use, was held by Judge Wallace to show that it was not the patented invention, where the success of the latter was immediate and absolute, as in the present case. 'It suffices to say that the defendants' case fails to meet and overthrow the presumption arising from the grant of the patent by such cogent and satisfactory proof as the rule of law applicable to the defense requires.'

"There should be a decree for the plaintiff in both of the suits."

John R. Bennett,
Counsel for
Appellant.

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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 84.

MICHAEL MAGIN,
Appellant,

vs.

JOHN J. KARLE,
Appellee.

No. 85.

MICHAEL MAGIN,
Appellant,

vs.

JOHN H. LEHMAN,
Appellee.

BRIEF FOR APPELLANT.

GEORGE B. SELDEN,
JOHN R. BENNETT,
Counsel for Appellant.

In the Supreme Court of the United States,

OCTOBER TERM, 1893.

MICHAEL MAGIN, Appellant, vs. JOHN J. KARLE, Appellee.	No. 84.
MICHAEL MAGIN, Appellant, vs. JOHN H. LEHMAN, Appellee.	No. 85.

BRIEF FOR APPELLANT.

Statement of Cases.

The bills, which are in the usual form and to like effect, charge the respective appellees with the infringement of the first and fourth claims of Letters Patent of the United States, No. 284,646, granted to Charles Gordon, of Rochester, N. Y, October 25th, 1881, for "Apparatus for Cooling and Drawing Beer," the title to which is shown to be in the appellant by an assignment under date of March 9th, 1882, from the said Charles Gordon to the appellant (p. 19).

The patent is printed at page 273 of the record, and the novelty of Gordon's invention, as therein shown, described and claimed, rests upon the use of a "cold air passage" surrounding the beer supply pipes in their passage from the keg or barrel in the cellar to the faucet in the saloon, thus utilizing the cold air produced in the upper saloon ice-box for the cooling of the beer.

The appellees, both of whom are saloon-keepers in the City of Rochester, wherein each have used an apparatus for cooling and drawing beer, which is charged to be an infringement of the first and fourth claims of the said Gordon patent, are members of the Saloon Keepers' Protective Association of the city of Rochester, which Association assumed and conducted their defence. Lehman, one of the appellees, testifies (p. 73):

"3 Q Are you one of the defendants in these cases?
"A. Yes, sir.
"4 Q. Are you a member of the Saloon-Keepers' Protection "Association of the City of Rochester?
"A. Yes, sir.
* * * * * *

p. 74.

"16 Q. You are the treasurer of this Association, aren't "you?
"A. Yes, sir.
"17 Q. And this Association is conducting the defense to these two cases, isn't it?
"A. Yes, sir; so far.
"18 Q. The Association employs Mr. Sullivan (counsel for the "appellees), doesn't it?
"A. Yes, sir."

George J. Weider testifies (p. 77), that he is the financial Secretary of the Saloon-Keepers' Protective Association of the City of Rochester:

"14 Q. Is your Association conducting the defense on behalf "of Lehman and Karle in the case brought against them by "Michael Magin?
A. "Do you mean defending the case for Lehman and Karle?
"15 Q. Yes.
"A. It conducts it as far as their Constitution reads. It is "to protect every member that belongs to the Association, and "very likely if the Constitution reads that, it must be so.
"16 Q. Don't you know that it is a fact that the Association "is defending Karle and Lehman in the case brought against

"them by Michael Magin for the infringement of the Gordon "patent?

"A. Yes, sir, as far I understand. That is what the Associa- "tion is there for, I believe, for protection."

The Constitution and By-laws of the said Saloon-Keepers' Protective Association of the City of Rochester provides:

Art. XIV., Rights of Members.

Sec. 1: "All members shall be entitled to the privileges of "said Association, and shall be defended by the attorney of said "Association for all alleged violations of the Sunday law, and "for all alleged violation of the excise laws of this "State, provided such members are duly licensed "as such keepers by the Excise Commissioners of the City of "Rochester, and also defended against any suits brought "against them, or either of them, for alleged infringement of "United States Letters Patent granted to Charles Gordon Octo- "ber 25th, 1881, No. 248,646, for an improvement in apparatus "for drawing and cooling beer."

The answers of the appellees (Karle, p. 6; Lehman, p. 16) are the same, and while denying infringement no proofs were offered in support thereof; the sole defense presented by the answers and proofs, being that of anticipation by the so-called Meinhard and Boehm apparatuses, both of which, it is alleged by the appellees, existed in the City of Rochester prior to the date of Gordon's invention.

Further answering, the appellees asserted that as Gordon's invention had, in a prior litigation between the appellant and other defendants in what are known as the Welker and McKay cases, been held to have been anticipated by the so-called Meinhard apparatus, and from which no appeal was taken, it stood in law null and void, and therefore, could not be "maintained" as against these appellees. Issue being joined by the filing of replications the cases proceeded to a final hearing upon the pleadings and proofs taken thereunder. The respective apparatuses of the appellees were shown by the production of drawings, which are to be found immediately preceding page 277, and which were admitted to be correct, and with a further admission as to their construction and operation (pp. 20–21); and the infringement was pointed out by appellant's expert witness Osgood (pp 23–25). No proofs were offered by the appellees in denial of infringement, and at the hearing they admitted, "The infringement of claims 1 and 4 are admitted if the Gordon letters patent are valid."

The proofs offered on the part of the appellees were confined solely to the defense of anticipation in an attempt to establish the prior existence of the so-called Meinhard and Boehm apparatuses as

containing the Gordon invention; and to establish that prior existence of the Meinhard apparatus, five witnesses were called, viz: John Meinhard, p. 302; Albert Stief, p. 280; William Barr, Jr., p. 386; Adolph Cassebeer, p. 421; and Ernest J. Schaub, p. 480; while to establish that prior existence of the Boehm apparatus, five depositions, viz: John Boehm, p. 645; Ernest J. Schaub, p. 580; Anthony Kleinhanz, p. 604; Joseph Rosch, p. 622; and Martin Selbig, p. 660, taken in the Welker and McKay cases were offered in evidence under stipulation that they be received with like force and effect as though retaken in these cases, p. 278.

In rebuttal, the appellant examined as to the Meinhard apparatus, eleven witnesses, viz: Raymond Stief, p. 27; Otto Hahn, p. 85; George J. Englert, p. 108; Otto Schantz, p. 150; Adelbert Cronise, p. 208; Charles Gordon, p. 213; Michael Magin, p. 222; Frank E. Witherspoon, p. 235; John F. Doran, p. 241; John V. Englert, p. 243; Henry Bartholomay, p. 263; and offered in evidence the affidavits given by the appellee's witnesses, Meinhard, p. 534; Stief, p. 529; Barr, p. 537; Cassebeer, p. 531; and Schaub, p. 532; which were used in opposition to a petition for a re-hearing in the so-called Welker and McKay cases And as to the alleged Boehm apparatus, offered in evidence five depositions, those of Charles Gordon, p. 538; Dominick Mura, p. 554; Samuel Benswanger, p. 560; Charles Bush, p. 561; and Michael Magin, p. 568; taken in the so-called Welker and Mckay cases under stipulation that they be received with like force and effect as though re-taken herein (p. 278).

It was not denied that Gordon was the first to use the "cold air passage" in an apparatus for cooling and drawing beer; indeed, that he was the first to in any manner or way whatsoever utilize the cold air of the upper or saloon ice-box for cooling the beer in its passage in and through the beer supply pipes from the keg to the faucet, unless the proofs established the prior existence of the alleged Meinhard and Boehm apparatuses. Neither was the value of Gordon's invention denied; and the proofs established its great value, and that it was at once adopted and went into substantially universal use. No prior patents were offered in evidence to negative the novelty and utility of Gordon's patent, or the validity of the claims of the patent.

The state of the art—if it may be so termed—rests solely upon an apparatus which, it was admitted, had been in use in the City of St. Louis, Missouri, prior to the date of Gordon's invention, wherein there was "no cold air passage" and no utilization in any manner or way whatsoever of the cold air of the upper or saloon ice-box for cooling the beer in and through its passage through the supply pipes from the keg or barrel to the faucet. In that case the beer-supply pipes were surrounded by an outer pipe "at least four inches in diameter, which was filled with sand or gravel" (p. 279), and into and through which neither the cold air nor cold water could or did pass, as there

was not only no opening from this outer pipe filled with sand or gravel into either the upper or saloon ice-box or the refrigerator or chamber in the cellar, but the construction neither contemplated or admitted of it. Obviously, it was a totally different beer-drawing apparatus, and that was admitted in the Circuit Court; nor was it there contended that there was no invention in what Gordon did in view of what may be termed the St. Louis apparatus. Gordon's apparatus for drawing and cooling beer was a success, and revolutionary in its effect, while the St. Louis apparatus was a failure as a beer cooler, besides not accomplishing the result accomplished by Gordon, which was to maintain the beer in the supply-pipes at a uniformly cold temperature.

Upon the pleadings and proofs, these cases were heard by the late Mr. Justice Blatchford, sitting at the Circuit, the sole defense urged being that of anticipation by the so-called Meinhard apparatus; infringement, novelty and utility and patentability being substantially conceded, and the defense of anticipation based upon the so-called Boehm apparatus, in effect, abandoned. The conclusion of the learned Justice was (p. 663):

> "A careful examination of all the evidence, with the aid of "exhaustive briefs for the respective parties, confirms me in the "conclusion at which I arrived in the McKay and Welker cases, "that the invention embodied in claims 1 and 4 of the Gordon "patent existed in the Meinhard apparatus prior to the time "when the invention was made by Gordon, and that that appa-"ratus was practical and successful."

And, accordingly, he directed a dismissal of the bills, and from the decrees entered in accordance therewith these appeals were taken.

It thus appears, as is the fact, that Mr. Justice Blatchford, in dismissing the bills in these cases, simply affirmed his former decision in the Welker and McKay cases, wherein he held the Gordon invention to be anticipated by the prior Meinhard apparatus. And he appears to have been controlled entirely by his former conclusion and the impressions then gathered, although the proofs before him in these cases were of a totally different character from those before him in the Welker and McKay cases, and should have, upon a separate examination of the proofs in these cases, led to a contrary conclusion from that announced in the Welker & McKay cases, even though the conclusion therein expressed was, upon the proofs then offered, correct.

The Welker and McKay cases referred to, were brought by the appellant for infringement of the same claims of the Gordon patent as are here involved, and the defenses urged were the same, but the proofs were of a totally different character. In those cases, the prior

existence of the Meinhard apparatus as embodying Gordon's invention (for it was and is admitted that, as originally constructed, it did not contain it), rested solely upon the unsupported testimony of Meinhard, which is printed in this record at page 521. He testified to having had in his saloon in Rochester, in the summer of 1877, an apparatus of which Mr. Justice Blanchard said:

> "That apparatus had the upper icebox, the supply pipe, the "faucet, the lower chamber, and the cold air passage surround- "ing the supply pipe and connecting between the icebox and "lower chamber."

His testimony stood alone, yet uncontradicted and unimpeached; and although he gave the names of three bartenders who had worked for him, and could testify as to the construction of his apparatus, none of them were called to corroborate his testimony. Surely it was most remarkable that the appellees should have rested that defense upon the testimony of a single witness; and it was probably more remarkable that no witnesses were called in rebuttal on the part of the appellant when, as the record now shows, such witnesses could easily have been obtained. It is believed that that fact, in connection with the fact that in these cases so many witnesses were called in rebuttal, caused Mr. Justice Blatchford to fail to give to the testimony the weight that it was entitled to, and must have caused him to view it with suspicion, for in no other way could he have arrived at the conclusion which he expressed. The result, in view of the proofs, fully justifies the conclusion that he gave the benefit of the doubt to the appellees instead of to the appellant, as he should have done under the well-settled rule. In those cases, the appellant being advised that an anticipation was not established by the testimony of a single witness, even though it stood uncontradicted and unimpeached, regarded it, as he was further advised, as unneccessary to call witnesses in rebuttal, and therefore the case went to a hearing upon the testimony of Meinhard with, as Mr. Justice Blatchford's opinion shows, the absolute certainty of the defence being sustained, unless the proposition contended for, that an anticipation was not sustained by the testimony of a single witness, was sound in law, as it would seem it was not.

A further contention relied on by the appellant was, that as the opening in the lower chamber was larger than the pipes pasiing through it so as to admit of the introduction of the outside air, it could not be regarded as an anticipation; which was an additional reason for not going to the expense of calling witnesses in rebuttal.

However, apart from the reasons which prompted the respective parties, the facts are that Meinhard was the only witness examined by the appellees to sustain the defense, and that no witnesses were examined in rebuttal by the appellant. Mr. Justice Blatchford's opinion in those

cases is printed at page 518. It was owing to the fact that Mr. Justice Blatchford had heard the Welker and McKay cases that it was stipulated that he should hear these cases, and that they should await his pleasure to that end (p. 279), the appellants having demanded it as a condition to that stipulation. Immediately following the filing of Mr. Justice Blatchford's opinion, wherein he held that the anticipation was sustained by the testimony of Meinhard alone, and knowing that no such apparatus embodying Gordon's invention had ever been constructed or used by Meinhard, the appellant filed a petition for a re-hearing, accompanied by numerous affidavits, setting forth what could and would be proved if the case was reopened; which were replied to by counter affidavits filed on the part of the appellees. That petition was denied in the following opinion (record, p. 520):

> "Under the rules laid down and applied in Colgate *v.* West-
> "ern Union Telegraph Co. (22 Blatchford C. C. R., 118), in
> "Hicks *v.* Otto (id., 122), and in Spill *v.* Celluloid M'f'g Co. (id.,
> "459) and the authorities referred to in the last named case, it
> "must be held that the plaintiff has not shown that he could
> "not, with reasonable diligence, have obtained prior to the
> "former hearing such of the testimony now sought to be ad-
> "duced as is material to the question involved. The prayer of
> "the petitioner for a re-hearing is therefore denied."

For obvious reasons no appeals were taken from the decrees in those cases, but forthwith these cases were commenced against the appellees as the only proceedings available to the appellant to establish the falsity of the alleged Meinhard anticipation, as it is submitted has been done.

As the determination of these appeals involves a consideration of the proofs taken herein, together with those taken in the Welker and McKay cases and the affidavits in opposition to the petition for a re-hearing, which form a part of this record, I will submit, in connection herewith, the very full argument which I submittted to the Court below at the final hearing as containing all that I can possibly urge concerning the alleged Meinhard and Boehm apparatuses.

Assignment of Errors.

The Circuit Court erred:

(1.) In finding "that the invention embodied in claims 1 and 4 of "the Gorden patent existed in the Meinhard apparatus prior to the "time when the invention was made by Gordon and that that appar- "atus was practical and successful."

(2.) In affirming upon the record in these cases the conclusion expressed in the Welker and McKay cases that "So far as claims one "and four (of the Gordon patent) are concerned, the invention was "anticipated by an apparatus invented and put in use by one Mein- "hard in Rochester, New York, in the summer of 1877, and which "was continued in use about four years."

(3.) In holding, as matter of law, that the alleged Meinhard anticipation was upon the proofs submitted "established beyond a reasonable doubt."

(4.) In dismissing the bills of complaint and in not sustaining the first and fourth claims of the Gordon patent and finding the appellees to have infringed and directing the entry of interlocutory decrees as prayed for.

Points of Argument.

Gordon's Invention and Patent.

The date of Gordon's invention is June, 1879, when he constructed, in Magin's saloon in the City of Rochester, the apparatus for cooling and drawing beer which is shown, described and claimed in his patent, and for which, after testing it there for about a year and ten months he filed his application for letters patent on the 23d day of April, 1881.

Gordon, p. 539; Magin, p. 569; p. 574.

There is no pretense, nor could there be, upon the proofs, that Gordon put his invention into use for more than two years prior to the filing of his application for letters patent. Prior to June, 1879, Magin had in his saloon an apparatus for drawing beer, put in by one Joe Wolfe, which consisted simply of an ice box or refrigerator in the cel-

lar into which the beer kegs were placed and from which the supply pipes ran up to the faucets in the saloon—in connection of course with a suitable air pump for forcing up the beer, and subsequently, at the suggestion of Mr. Bartholomay, the beer supply pipes were covered with hair felt to a thickness of several inches. This apparatus was a failure.

Gordon, p. 539, Q. 9.
Magin, p. 570, Q. 16–18; p. 572, Q. 38–39; p. 577, Q. 105.

Gordon was a brewer and malster of wide experience and Magin having brought to his attention the failure of the Wolfe apparatus and that he was about to abandon it and return to the old way of drawing beer direct from the keg, he set himself to work designing and constructing for Magin, a beer cooling and drawing apparatus, which resulted in the production of the apparatus which is the subject of the patent here in suit. (Gordon, p. 538, Q. 4. Magin, p. 576, Q. 90). Having demonstrated the success of his apparatus by testing it for about a year and ten months in Magin's saloon, he, in the spring of 1881, put in a second apparatus of that construction and made his application for letters patent; and immediately following, he, and subsequently Magin, who acquired title to the patent, put in many like apparatuses.

Gordon, p. 540, Q. 17; Magin, p. 570, Q. 15.

The invention will be readily understood, as well as its great value appreciated, from a simple reading of the patent, wherein it is stated:

> "My invention relates to an improved apparatus having for
> "its object the keeping of beer, ale, or other liquid at a low tem-
> "perature during the operation of drawing the same for con-
> "sumption; and it consists in surrounding the supply-plate
> "through which the beer is delivered to the faucet with a cold-
> "air passage, for the purpose of maintaining a low tempera-
> "ture in the liquid in the supply pipe,"

which was a great *desideratum* and had not before been accomplished in any existing beer drawing apparatus. The novelty of the invention rested upon the use of "a cold-air passage" through which the beer supply pipes ran in passing from the keg in the cellar chamber to the faucet from which the beer was drawn in the saloon; and by means of this cold air passage opening into the saloon ice-box, the cold air generated therein, in passing out and down, came in direct contact with the beer supply pipes through which the beer passed in an upward direction from the keg to the faucet. That combination; that use of a cold air passage; that result were all original with Gordon.

Gordon's apparatus as set forth in his patent consists, briefly stated, of an upper ice-box located in the saloon and provided with a faucet, and a chamber located in the cellar, the two being connected by a cold air and water passage through which passed the supply pipes conveying the beer from the keg in the cellar to the faucet in the saloon. The cold air and water—produced by the melting of the ice—in passing down through the cold air passage, the only means of escape, came in contact with the beer supply pipes, which reduced and maintained at a uniform point the temperature of the beer contained in and passing through the supply pipes. The apparatus is provided with any suitable air compressor properly connected, whereby the beer is forced from the keg upward through the beer supply pipes to the faucet.

This construction, operation and effect is covered by the first and fourth claims of the patent, which are

First.—"The combination of the ice-box D, supply-pipe B, faucet C, and the cold-air passage H, surrounding the supply-pipe, substantially as and for the purposes set forth.

4. The combination of the ice-box D, supply pipe B, faucet C, lower chamber F, and the cold air passage H, communicating between the ice-box and the chamber, substantially as described.

And this construction, operation and effect is likewise found and to the same extent in the respective apparatuses of the appellees, as will be clearly seen from an examination of the drawings of those apparatuses immediately following page 277.

Infringement.

In the Circuit Court the appellees admitted: "The infringement of claims 1 and 4 are admitted if the Gordon letters patent are valid." While denying it in their answers no proofs were offered to sustain the denial. If denied in this Court, which is not probable, a comparison of the drawings of the respective apparatuses of the appellees with the drawing of the Gordon patent, will show it to be without foundation. They will be found to be substantial copies of the Gordon apparatus, and this is placed beyond question by the admissions wherein are set forth the construction, operation and effect of the appellees' respective apparatuses. Those admissions will be found on pages 20 and 21, and are as follows:

As to the Karle apparatus

> "The apparatus consisted of an upper ice-box located in a "saloon, and a lower ice box or chamber located in the "cellar, said boxes being connected by a galvanized "iron pipe of about four inches in diameter, the upper

"ice-box to be filled with the ice, and the lower ice box "or chamber containing an ice rack or holder running "across one end, to be filled with ice, and the kegs of beer "to be placed in the remaining part of the chamber. The "supply pipes, of which there are six, each of ⅜ diameter, for "conveying the beer from the kegs to the faucet are conducted "up through the galvanized iron pipe which connects the upper "and lower ice-box or chambers, the supply or beer pipes run-"ning through the upper ice-box, where they are connected "to the faucets.

"The galvanized iron pipe connecting the upper and lower "chambers, through which the beer supply pipes are run, acts "both as a cold-air passage from the upper to the lower cham-"ber and as a drip pipe for conducting the ice water from the "upper ice-box to the lower ice-box or chamber when the "apparatus is in use.

"Ice is placed in the upper ice-box and in the ice rack or "holder in the lower ice-box, and the beer supply pipes running "through the galvanized iron pipe connecting the upper and "lower chambers are connected to the beer kegs in the lower "chamber and the faucets in the upper chamber, and, air-pres-"sure being properly introduced into the kegs and the faucets "on the upper ice-box opened, the beer is forced up and out. "The galvanized iron pipe conducting the upper and lower "chambers, being somewhat larger in diameter than the beer "supply pipes, conducts the ice water formed by the melting of "the ice from the upper to the lower chamber and around the "beer supply pipes, and at the same time acts as a cold-air "passage from the upper to the lower chamber for the purpose "of cooling the beer contained in and passing through the beer "supply pipes."

To like effect are the admissions as to the Lehman apparatus.

In view thereof, and of the drawings of the respective apparatuses, there can be no question as to their identity, and that the appellees have infringed the first and fourth claims of the patent.

Patentability.

The patentability of Gordon's invention, as expressed in the first and fourth claims of his patent, was not denied in the Circuit Court. It was in effect admitted, as I have no doubt it will be in this Court, since there is nothing upon which to base a contrary contention.

What state of the art there is, is exhibited in the so-called St. Louis

apparatus, the construction of which is set forth in the stipulation at page 279, in which confessedly there was no cool air passage, nor anything suggestive of it. It was a totally different apparatus, both in construction, operation and effect. In the St. Louis apparatus the beer supply pipes pass through a pipe that was filled with "sand or gravel," and into and through which neither the cold air or cold water from the upper ice-box did or could pass. The very purpose and object of that apparatus was to the contrary. It was nothing more in effect than the Wolfe apparatus which Magin had in his saloon prior to the Gordon apparatus, wherein the beer supply pipes were surrounded with hair felt. Surely Gordon's invention was not lacking in patentable novelty, in view of the St. Louis apparatus. His apparatus, as compared with that, was undeniably new, and it was new in the very broadest sense, in that no such apparatus existed before. The very fact that prior to Gordon's invention there existed beer-drawing apparatuses wherein attempts were made not to reduce, but to prevent as much as possible a great increase in the temperature of the beer in the supply pipes and during its passage from the keg to the faucet, by wrapping the pipes in hair felt, and passing them through larger pipes filled with sand and gravel, in view of the results accomplished by Gordon, greatly heightens the presumption in favor of the patentability of the invention.

Under the well settled rule the patent is *prima facie* evidence of the sufficiency of the invention therein set forth and claimed, and that presumption is not to be set at naught unless so obviously wrong as to admit of no other conclusion. If the addition of a cold air passage was so obvious as not to have required invention, why did it not occur to Wolfe, why did it not occur to the designer and constructor of the St. Louis apparatus, and why did it not occur to the thousands of brewers and saloon keepers, all of whom must have appreciated the necessity for an arrangement that would not only prevent an increase in the temperature of the beer, but that would reduce and maintain the beer at a uniformly cool temperature while in and passing through the beer supply pipes from the keg in the cellar to the faucet in the saloon. Yet the fact is that it occurred to none prior to the date of Gordon's invention unless the proofs establish to your entire satisfaction—that is, beyond a reasonable doubt—the prior existence of either the Meinhard or Boehm apparatuses.

As was said by the late Mr. Justice Bradley, sitting at the Circuit, in the case of Reiter & ors. *v.* Jones and Laughlin, 35 Fed. Rep., page 421:

> "It is contended that the making of the grooves was no in-
> "vention; and that, if it was, they had been made and used be-
> "fore for precisely the same purpose. The fair questions to
> "put, however, are, was there no invention in the whole thing

"taken together, the detachable crown or lid with the grooves "and cells? And had such a crown or lid been made and used "before? In answer to these questions the patent itself is *prima* "*facie* evidence in favor of the patentee, or of the complainants "who represent him; and unless there is clearly no invention "in what is claimed to be such, or preponderating evidence of "anticipation, the patent should be sustained. I cannot say "that there was clearly no invention in the thing patented. It "is certainly a very useful contrivance, and has greatly facili- "tated the making of chains. It could not, therefore, have been "a very obvious improvement, or it would have been adotped "long ago."

And as was said by his Honor Judge Shiras in the case of Shaver *v.* Skinner Mfg. Co., 30 Fed. Rep., p. 68, as follows:

"If the question was before me as an original one, with the "burden upon the complainant of establishing, by satisfac- "tory evidence, the patentable character of the combination, "unaided by the presumption arising from the issuance of "the Letters Patent, I should entertain grave doubts as to the "conclusion to be reached. As the issue is, however, now pre- "sented, the complainant has the benefit of the presumption in "his favor arising from the issuance of Letters Patent, which, "*prima facie*, establishes the novelty of the invention therein "described.

"*Seymour* v. *Osborn*, 11 Wall, 516.
"*Smith* v. *Goodyear*, 93 U. S., 486.
"*Lenbender* v. *Holthaus*, 105 U. S., 94."

It is true that in a broad sense all Gordon did was to add a cold air passage, but it was just that addition which made it a totally different apparatus: just that addition which gave to the apparatus the new function of cooling and maintaining the beer in the supply pipes at a uniform temperature, and just that addition which was necessary to and did make it a success as compared with all prior apparatuses That is most completely demonstrated by the fact that since the introduction of the Gordon apparatus, it has superseded all other beer drawing apparatuses to the extent that at the present day, it has gone into almost universal use.

It may be that it was not a great invention, neither is it necessary that it should be, so long as it involved some invention, and that, tested by every known rule it did involve; for it was not only new, but involved in its conception and application the exercise of that which the law has defined to be invention. The doctrine of this case is clearly the doctrine of the Barb Wire case, 143 U. S., page 275.

In that case the Court said, speaking through Mr. Justice Brown, where the invention consisted essentially in substituting a barb formed by coiling a short piece of wire between its ends around the main or supporting wire, and holding it in place thereon by the twist of a second wire, where a sheet metal barb had previously been used:

> "The difference between the Kelly fence and the Glidden "fence is not a radical one, but slight as it may seem to be, it "was apparently this which made the barbed wire fence a prac- "tical and commercial success."

Precisely as did the addition of the cold air passage by Gordon make the beer drawing apparatus a practical and commercial success as a cooling apparatus: indeed gave to it that capacity.

Continuing the Court said:

> "Under such circumstances, Courts have not been reluctant "to sustain a patent to the man who has taken the final step "which has turned a failure into a success. In the law of pat- "ents it is the last step that wins. It may be strange that, con- "sidering the important results obtained by Kelly in his patent, "it did not occur to him to substitute a coiled wire in place of a "diamond shaped prong, but evidently it did not; and to the "man to whom it did ought not to be denied the quality of in- "ventor. There are many instances in the reported deci- "sions of this Court where a monopoly has been sustained in "favor of the last of a series of inventors, all of whom were "groping to obtain a certain result, which only the last one of "the number seemed able to grasp."

How, under that doctrine, will you deny to Gordon the quality of inventor, it appearing that he was the first to add a cold air passage with results that stand undisputed? If to Glidden belongs the "quality of inventor," as it clearly did, equally so does it belong to Gordon, and should not be denied him.

To like effect are the expressions of this Court in the cases cited with approval in the Barb Wire case, as well as the subsequent cases of Topliff *v.* Topliff, 145 U. S., 163, wherein this court said, speaking through Mr. Justice Brown:

> "Trifling as this deviation seems to be, it renders it pos- "sible to adapt the Augur device to any side-spring wagon "of ordinary construction.
>
> "While the question of patentable novelty in this device "is by no means free from doubt, we are inclined, in view of

> "the extensive use to which these springs have been put
> "by manufacturers of wagons, to resolve that doubt in favor
> "of the patentees, and sustain the patent."

And of Kremetz *v.* S. Cottle Co., 148 U. S., 559, wherein it was said, speaking through Mr. Justice Shiras:

> "It is not easy to draw the line that separates the ordinary
> "skill of mechanic, versed in his art, from the exercise of
> "patentable invention, and the difficulty is specially great
> "in the mechanic arts, where the successive steps in improve-
> "ments are numerous, and where the changes and modifica-
> "tions are introduced by pratical mechanics. In the present
> "instance, however, we find a new and useful article, with
> "obvious advantages over previous structures of the kind."

So in this case, we find a new apparatus with obvious advantages over every known apparatus.

The opinion continues:

> "It was also made to appear that the advantages of the
> "new button were at once recognized by the trade and by
> "the public, and that very large quantities have been sold."

The very great value of Gordon's invention is not and cannot be denied. It is fully sustained by the proofs offered by the appellant to which not even an attempt at a reply was made. Its introduction, considering the cost and character of the apparatus, as well as the royalty charged, was truly phenomenal.

Gordon, p. 540, Q. 17–20; Magin, p. 570, Q. 15.

The proofs further show that immediately following its introduction it was seized upon by infringers, and especially by those who were engaged in constructing beer drawing apparatuses of other types, among them Cassabeer, Barr, Jr., and Wolfe. But in addition to the proofs upon this point, as this Court said in Lenbender *v.* Holthaus, 105 U. S., 94, speaking through the late Mr. Justice Woods:

> "The patent is *prima facie* evidence of both novelty and
> "utility, and neither of these presumptions has been rebutted
> "by the evidence." * * * The fact that it has been in-
> "fringed by defendants, is sufficient to establish its utility, at
> "least against them."

Also in Western Electric Co. *v.* La Rue, 139 U. S., p. 608. Should more be needed it will be found in the unqualified endorsement given

to the Gordon apparatus by the ten leading brewers in the City of Rochester, p. 277.

> "The undersigned, engaged in the Brewing interest, have "witnessed the continued success of Gordon's Patent Beer "Cooler and do not hesitate to recommend and indorse its use. It "is a simple yet effective process for securing uniform tempera- "ture and giving the best of satisfaction wherever it is used, "when properly constructed."

The rule applicable to the facts in this case were stated by this Court as early as the case of Smith *v.* Goodyear Dental Vulcanite Company, 93 U. S., 486, and has since been restated and applied in numerous cases down to the present day :

> " Undoubtedly, the results or consequences of a process of " manufacture may in some cases be regarded as of importance " when the inquiry is, whether the process or manufacture ex- " hibits invention, thought and ingenuity. Webster, on the " subject matter of patents, page 36, says : ' The utility of the " change, as ascertained by its consequences, is the real practi- " cal test of the sufficiency of an invention ; and since the one " cannot exist without the other, the existence of the one may " be presumed on proof of the existence of the other. Where " the utility is proved to exist in any degree, a sufficiency of in- " vention to support the patent must be presumed. We do not " say the single fact that a device has gone into general use, and " has displaced other devices which had previously been em- " ployed for analogous uses, establishes in all cases that the lat- " ter device involves a patentable invention. It may, however, " always be considered ; and when the other facts in the case " leave the question in doubt, it is sufficient to turn the scale."

Judged by that rule any defence of insufficiency of invention that may be urged herein would seem to be without the least support.

Anticipation.

Two anticipations are alleged; by Meinhard and Boehm respectively, both of Rochester, New York.

It is indeed a strange coincidence that both of these alleged anticipations should have occurred in the City of Rochester, wherein Gordon's invention was made and introduced and just prior thereto, and yet their existence have remained substantially unknown, even according to the appellees' own showing, until brought forth for the purposes of this litigation. It is difficult to understand why, if these apparatuses existed as claimed, they were not heard of prior to Gordon's invention; why they were not known to the brewers, malsters and saloonkeepers of Rochester, all of whom it would appear immediately learned of the placing of Gordon's apparatus in Magin's saloon and at once recognized its very great value, for, as the proofs show, it received the unqualified endorsement of the brewers and malsters of Rochester, and went into substantially universal use in Rochester; why the three or four plumbers, who now claim to have known of them, did not at once engage in putting in beer drawing apparatuses embodying the "cold-air passage," which would have brought them great profit, instead of waiting until after the thorough introduction of the Gordon apparatus, and why Meinhard, when he visited Magin's saloon, after the Welker and McKay cases were brought and before he was examined therein—and examined and had explained to him the Gordon apparatus and took away with him a circircular wherein it was shown and described, did not make mention of his apparatus as embodying a cold air passage, instead of saying, as he did, that he had nothing of the kind (pp. 224–225). Of them may it not be said, as was said by this Court in Atlantic Works *v.* Brady, 107 U. S., 192: "It may be true, but we cannot give it effect against "what he himself did and did not do without disregarding the ordi- "nary laws that govern human conduct;" for, to accept these alleged anticipations in view of the proofs upon which they rest, is to totally disregard "the ordinary laws that govern human conduct." The proofs upon which they rest are fully treated of in the argument submitted herewith. The existence of the alleged Meinhard apparatus as embodying the Gordon invention, rests upon the testimony of Meinhard, a saloon keeper in the City of Rochester and a member of the Saloonkeepers' Protective Association, Albert Steif, whom he claims was one of his bartenders, and at the time of giving his testimony a bartender in the employ of a member of the association, and three plumbers, viz.: Cassebeer, Barr, Jr, and Schaub, each of whom claims to have casually examined the apparatus on a single occasion when doing some repair in connection with it—

the two latter being confessed infringers of the Gordon patent—and all of them largely engaged in working for saloonkeepers who are members of the Protective Association. As to the value of testimony springing from such sources, his Honor Judge Blodgett said, in the case of Wetherell *v.* Keith and others, 27 U. S., p. 366:

> "The witnesses by whom a prior use is attempted to be shown "are Max Schwab, Robert G. Lester and August Seligman. "* * * The proof also shows that both Schwab and Selig- "man are infringing the complainant's patent, and that Lester "is in the employ of Seligman. * * * Upon the whole, "then, I come to the conclusion that the defendants' proof of "prior use is not sufficiently clear and certain to establish such "prior use before the date of Carpenter's invention."

But the testimony of these witnesses is most positively contradicted by the testimony of numerous witnesses who were at the time in the employ of Meinhard and in a position to, and as they testified, did know as to the construction of the apparatus in question.

Otto Schanz, one of Meinhard's regular bartenders but no longer in or connected with the beer business; Raymond Stief, likewise one of Meinhard's regular bartenders, but no longer in or connected with the beer business; Otto Hahn, likewise one of Meinhard's regular bartenders, but no longer in or connected with the beer business; George J. Englert, who worked for Meinhard, and part of the time as assistant bartender; and John V. Englert, who delivered beer at Meinhard's, and placed it in the lower ice box—all testified there was no cold air passage in Meinhard's apparatus, or any such construction as is contended for. Henry Bartholomay, the great brewer of Rochester, whose beer Meinhard sold and who visited his saloon, and knew of and talked with him about his apparatus, never heard and did not know of its having a cold air passage or any such construction as contended for by appellees.

There is both preponderance and quality of evidence against the existence of this alleged Meinhard apparatus as embodying the Gordon invention. In sharp contrast to the appellees' witnesses are the appellants' witnesses, who are shown to be entirely disinterested and beyond the control or influence of either the saloon-keepers Protective Association or the appellant. Meinhard's apparatus' as originally constructed in the summer of 1877, did not contain Gordon's invention. This is admitted. He claims, however, to have added the cold air passage by using rubber hose, which he slipped over the beer supply pipes so that it acted both as a cold-air and a cold-water passage; that he did this himself without the assistance or the knowledge of anyone, and in the summer of 1877. He says that after using the apparatus "only a short while," he made certain changes:

"At first we put in some kind of coils on the bottom of the "upper ice box so as to put ice on and keep the beer cooler but "afterwards we took these out because they could not be well "cleaned; then we put on this rubber hose that was not on be- "fore. That is about all the alteration made that I recollect."

So that the rubber hose was added after the coils were taken out. He says the plumber, Cassebeer, removed the coils, Cassebeer when examined in the interval between Meinhard's direct and cross-examination, testifies to taking out the coils and it was clearly established on his cross examination that he did no work for Meinhard until May, 1878, so that it could not have been before that time; and an examination of his accounts gives no indication as to when the coils were removed; but he claims to have seen rubber hose when the coils were taken out. Thereafter and with a knowledge of Cassebeer's testimony, Meinhard says that he put the rubber hose on before the coils were taken out, thus contradicting his former testimony. Albert Steif, the bartender, testifies that no changes whatever were made in the apparatus, and that the rubber hose surrounded the beer supply pipes as a part of its original construction; while Barr, Jr., testifies that there was no rubber hose around the beer supply pipes, but that they were encased in a metal pipe, which metal pipe was enclosed in a wooden box; and Schaub testifies that he saw rubber hose but knows nothing as to their arrangement. Indeed, his testimony, as well as that of Cassebeer and Barr, Jr., show that they knew nothing whatever about the apparatus.

Meinhard testifies that the beer supply pipes were one-half an inch in diameter, and that around them he placed rubber hose an inch to an inch and a quarter in diameter, thus making cold air passages. But where did he get such rubber hose? He says he used the ordinary hydrant hose which he had, but it is shown that his hydrant was adapted only for a three-quarter inch hose. He first testified that he used the same hose continuously and that later on that he changed the hose several times, yet could not tell where he got the hose from for that purpose.

The appellant's witnesses testify that there were no such hose at any time around the beer supply pipes and that they were always uncovered, and that the coils were in the upper icebox down to the respective dates when the respective witnesses left Meinhard's employ. Upon such a showing can it be said that the appellees have established the prior existence of the Meinhard apparatus embodying Gordon's invention beyond a reasonable doubt? For that is what the rule requires.

As early as Coffin *v.* Ogden, 13 Wall., 120, this Court said:

> "The burden of proof rests upon him (the defendant) and "every reasonable doubt should be resolved against him."

Now, what is a reasonable doubt? It has been said that:

> "It is not mere possible doubt, because everything relating "to human affairs and depending on moral evidence, is open to "some possible or imaginary doubt. It is that state of the case "which, after the entire comparison and consideration of all the "evidence, leaves the mind in such a condition that it does not "feel an abiding conviction to a moral certainty of the truth of "the charge. It is not sufficient to establish a proba-"bility, though a strong one arising from the doctrine of "chances, that the fact charged is more likely to be true than "the contrary; but the evidence must establish the truth of the "fact to a reasonable and moral certainty—a certainty that "convinces and directs the understanding and satisfies the "reason and judgment of those who are bound to act con-"scientiously upon it. This is proof beyond reasonable doubt."

Do the proofs in this case meet the requirements of that definition? It is submitted that they do not, for no one can read them and say that they establish to a reasonable and moral certainty—a certainty that convinces and directs the understanding and satisfies the reason and judgment, the prior existence of either the Meinhard or Boehm apparatus as embodying the Gordon invention. That there is some proof is not sufficient. There must be convincing proof; proof that leaves no reasonable doubt, as above defined, in the mind of a reasonable person and one accustomed to the weighing of evidence. A doubt which springs solely from the evidence and not from suspicions or probabilities.

This Court had occasion to consider and define the expression "beyond a reasonable doubt" in the case of Hope *v.* Utah, 120 U. S., p. 441, where, speaking through Mr. Justice Field, it was said:

> "If the evidence produced be of such a convincing charac-"ter that they would unhesitatingly be governed by it in such "weighty and important matters, they may be said to have no "reasonable doubt respecting the guilt or innocence of the ac-"cused, notwithstanding the uncertainty that attends all hu-"man evidence. * * * * The evidence must "satisfy the judgment of the jurors as to the guilt of the de-"fendant, so as to exclude any other reasonable conclusion."

And then quoted with approval the instructions given by Chief Baron Pollock in Rex *v.* Muller, 4 Fost. & Fin., 388–89. In applying that

definition, Mr. Justice Jackson said when sitting at the Circuit, in United States *v.* Harper, 33 Fed. Rep.:

> "A reasonable doubt is an honest, substantial misgiving, gen-
> "erated by the insufficiency of the proofs; an insufficiency
> "which fails to convince your judgment and conscience and
> "satisfy your reason."

No one can read the proofs in this case and say that they convince your judgment and conscience and satisfy your reason as to the prior existence of Meinhard's apparatus embodying the Gordon invention. There is nothing convincing about them; on the contrary, they create the very gravest doubt, if they do not leave the firm conviction that there was never present in that apparatus, as well as in the Boehm apparatus, a cold air passage. Nor is the rule different in criminal cases from what it is in civil cases; the same certainty of proof is required in both, only in the criminal case, the burden is upon the prosecutor who is pressing for a conviction, whereas, in the civil case, it is on the defendant, who is seeking to establish the defence. In Ross *v.* Montana Ry. Co., XLV. Fed. Rep., p. 425, Judge Knowles said, in charging the jury:

> "This patent affords, *prima facie*, a presumption that the
> "plaintiff, Ross, was the original and first inventor of this car.
> "The defendant may overthrow this presumption, but in order
> "to do this, it must establish that he is not such first
> "and original inventor by evidence so strong and
> "convincing that you can say that he is not the first
> "and original inventor of this car, to a moral certainty. A
> "moral certainty is that high degree of probability, though less
> "than absolute assurance, that induces prudent and con-
> "scientious men to act unhesitatingly in matters of the gravest
> "importance. This instruction as to a moral certainty is
> "equivalent to the instruction that is generally given in crimi-
> "nal cases, that a jury must be satisfied beyond a reasonable
> "doubt of the guilt of a defendant, and, if there
> "is a reasonable doubt in the mind of the jury, it
> "must then be resolved in favor of the defendant; and
> "in this case the reasonable doubt that may be in the minds of
> "the jurors as to who is the first inventor should be given to
> "the one who has the patent for the invention. If you are not
> "satisfied to a moral certainty of it, that is, beyond a reason-
> "able doubt, that the plaintiff is not the inventor, then you
> "should find that he is the first and original inventor."

It is respectfully submitted that, judged by this well-established rule, the proofs in these cases fall far short of establishing the alleged

anticipations beyond a reasonable doubt, and if, as has been said in substance in a well-considered case, preponderance of evidence is sufficient in a civil case to create a reasonable doubt, it is here created, for not only have we preponderance, but quality.

As His Honor Judge Hammond said, in United States *v.* Means and ors., 47 Fed. Rep., 607, in defining a reasonable doubt,

> "It must be created by an inadequacy of proof "so great that you are not reasonably satisfied of the "guilt of the defendants. It must grow out of the proof "as being insufficient to convince you, or as being of "doubtful quality or both; and it may arise out of a "total or partial want of proof, out of the bad character of "witnesses, whose credibility you reasonably doubt, or out of any "other infirmity in regard to it, whether the witnesses or any of "them be of doubtful character or not."

Undeniably the appellees' testimony is not only of doubtful quality but comes from witnesses whose credibility is far more than reasonably doubtful, all of them, to say the least, being subject to the influences and control of the saloon-keepers' Protective Association, and two of them large infringers.

Of these cases as was said by the late Mr. Justice Blatchford, then sitting at the Circuit in Hitchcock *v.* Tremaine, 9th Blatchf., 522:

> "This is one of those cases so often met with in the history "of patents, when an invention, once perfected, has shown "itself to be so useful and so highly appreciated as to have "gone at once into extensive use, that it is inherently impossi- "ble it should have been known before, and not have gone "into general use. Its success leads infringers and inventors "to set up crude and unsuccessful experiments as anticipating "it, and dim recollections are stimulated and conscience "strained, to clothe with living flesh what was an inert and "useful skeleton."

And that view of the proofs in these cases, on the part of the appellees, is indeed a most charitable one Their proofs, instead of removing all reasonable doubt, created the gravest kind of a doubt, and of such a character as should cause any one to say, as did Mr. Justice Strong, in the case of Parham *v.* American Button Hole Company, 4th Fisher, 468: "To doubt upon this point is to resolve in the negative."

In the case of the *American Bell Telephone Co. et al.* v. *People's Telephone Co.* and others, 22 Fed. Rep., 309, where it was attempted to establish the prior existence of the alleged Drawbaugh telephone by the testimony of nearly 200 witnesses, his Honor, *Judge Wallace*,

stated and applied the rule as announced by this Court in *Coffin* v. *Ogden* and *Cantrill* v. *Wallack*, as follows:

> "The complainant starts with the benefit of the presumption "of law that Bell, the patentee, was the inventor of "that for which the letters patent were granted him. "Whoever alleges the contrary must assume the bur- "den of proof. Evidence of doubtful probative "force will not overthrow the presumption of novelty "and originality arising from the grant of letters patent for an "invention. It has been frequently held that the defense of want "of novelty or originality must be made out by proof so clear and "satisfactory as to remove all reasonable doubt. Washburn *v.* "Gould, 3 Story, 122; Smith *v.* Fay, 6 Fisher, 445; Hawes *v.* "Antisdell, 2 Bann. & Ard., 10; Patterson *v.* Daff, 20 Fed. Rep. "641: Wood *v.* Cleveland Rolling Mill Company, 4 Fisher, 560; "Parkham *v.* American Buttonhole Co., Id., 482. In U. S. "Stamping Co. *v.* Jewett, 18 Blatchf., 469, S. C., 7 Fed. Rep., "869, Blatchford, J., said the defendant had not fulfilled 'the "necessary obligation of showing beyond any reasonable doubt' "that Weber (the alleged prior inventor) was prior to Heath (the "patentee.) In Coffin *v.* Ogden, 18 Wall., 120, Mr. Justice "Swayne, delivering the opinion of the Court, stated the rule "applicable to the defendant, as follows:
>
> "The burden of proof rests upon him, and every reasonable "doubt should be resolved against him."

Which rule was approved and applied by this Court in the consideration of that case on appeal, 126 U. S.

As to the true rule and its proper application to these cases there would seem to be no doubt; and that it was not applied at the Circuit, would seem to be equally certain. However, since the decision of these cases at the Circuit, this court has had occasion in the Barb Wire cases, 143 U. S., p. 284, to consider and exhaustively review the defence of anticipation "proven only by oral testimony," and the rule of law applicable thereto, and you there said, speaking through Mr. Justice Brown:

> "We have now to deal with certain unpatented devices "claimed to be complete anticipations of this patent, the ex- "istence and use of which are proven only by oral testimony. "In view of the unsatisfactory character of such testimony, "arising from the forgetfulness of witnesses, their "liability to mistakes, their proneness to recollect things "as the party calling them would have them recollect them,

"aside from the temptation of actual perjury, courts have not "only imposed upon defendants the burden of proving such "devices, but have required that the proof shall be "clear, satisfactory, and beyond a reasonable doubt. "Witnesses whose memories are prodded by the eagerness "of interested parties to elicit testimony favorable to them- "selves are not usually to be depended upon for accurate "information. The very fact, which courts as well as the "public have not failed to recognize, that almost every im- "portant patent, from the cotton gin of Whitney to the "one under consideration, has been attacked by the testi- "mony of witnesses who imagined they had made similar "discoveries long before the patentee had claimed to have "invented his device, has tended to throw a certain "amount of discredit upon that class of evidence, "and to demand that it be subjected to the closest "scrutiny. Indeed, the frequency with which testi- "mony is tortured, or fabricated outright, to build up "the defence of a prior use of the thing patented, goes "far to justify the popular impression that the in- "ventor may be treated as the lawful prey of the infringer;"

every word of which applies with equal force to the proofs in these cases. Apply that rule as there applied to these cases and there will be no escape from the conclusion that the defence of anticipation, based upon the alleged Meinhard and Boehm apparatuses, have not been established beyond a reasonable doubt.

As to the alleged Boehm apparatus the proofs are of such a character as not to call for further discussion than is contained in the argument submitted herewith. It was in effect abandoned at the Circuit, and I have no doubt it will be in this court) but whether it is or not, that it is not sustained will be evident from a mere reading of the testimony upon which it is based.

There is no pretence that Meinhard surrounded the supply pipes with rubber hose to create a cold air passage, for he did nothing of the kind. According to his own story he simply placed them there to carry off the water from the upper ice-box. Indeed it is very questionable, even if they were there, if they created a cold air passage. They certainly did not if they were ordinary hydrant hose which would be not to exceed three-quarters of an inch in diameter, for it is evident to any one that in carrying off the water from the upper ice-box, they would soon become clogged, with a pipe one-half inch in diameter passing through them; and it was undoubtedly for that reason that Meinhard said the rubber hose was from an inch to an inch and a quarter in diameter, yet was not able to account for the presence of

such hose on his place, or where they came from. No one of the appellees' witnesses goes so far as to say that they understood that the use of the rubber hose was to create a cold air passage; apparently nothing of that kind was in the mind of any of them, including Meinhard himself. If there was there a cold air passage, it was purely accidental and without appreciating its value and certainly without conveying to the world any knowledge of the invention which it is claimed Gordon made, and certainly was the first to introduce. Why, then, does not this case come within the rule announced by this Court in Gaylor *v.* Wilder, 10 How., 376, where it was said, speaking through Mr. Chief Justice Taney:

> "It appears that James Connor, who carried on the business "of a stereotype founder in the City of New York, made a "safe for his own use between the years 1829 and 1832, for the "protection of his papers against fire, and continued to use it "until 1838, when it passed into other hands. It was kept in "his counting-room and known to the persons engaged in the "foundry; and after it passed out of his hands he used others "of a different construction.
>
> "It does not appear what became of this safe afterwards. "And there is nothing in the testimony from which it can "be inferred that its mode of construction was known to the "person into whose possession it fell, or that any value was "attached to it as a place of security for papers against fire, "or that it was ever used for that purpose.
>
> * * * * * * *
>
> "Upon the same principle and upon the same rule of construc- "tion, we think that Fitzgerald must be regarded as the first "and original inventor of the safe in question. The case as to "this point admits that although Connor's safe had been "kept and used for years, yet no test had been "applied to it, and its capacity for resisting heat was "not known. There was no evidence to show that any par- "ticular value was attached to it after it passed from his posses- "sion, or that it ever was afterwards used as a place of security "for papers; and it appeared that he himself did not attempt "to make another like the one he is supposed to have invented, "but used a different one. And upon this state of the evidence "the Court put it to the jury to say whether this safe had been "finally forgotten or abandoned before Fitzgerald's invention, "and whether he was the original inventor of the "safe for which he obtained the patent, directing "them, if they found these two facts, that their ver- "dict must be for the plaintiff. We think there is no

"error in this instruction, for if the Connor safe had passed "away from the memory of Connor himself and of those who "had seen it, and the safe itself had disappeared, the "knowledge of the improvement was as completely lost "as if it had never been discovered. The pub- "lic could derive no benefit from it until it was discovered by "another inventor. And if Fitzgerald made this discovery by "his own efforts, without any knowledge of Connor's, he in- "vented an improvement that was then new and at that time "unknown, and it was not the less new and unknown because "Conner's safe was recalled to his memory by the success of "Fitzgerald's."

It is submitted that it does. And it is further submitted that the appellees have totally failed to establish beyond a "reasonable doubt" the prior existence of either the alleged Meinhard or Boehm apparatuses as embodying Gordon's invention, and that the decrees of the Circuit Court should be reversed.

GEORGE B. SELDEN,
JOHN R. BENNETT,
Counsel for Appellant.

U. S. SUPREME COURT

JAN. [illegible]

MICHAEL MAGIN
vs.
JOHN J. KARLE.

No. 84

MICHAEL MAGIN
vs.
JOHN H. LEHMAN.

No. 85.

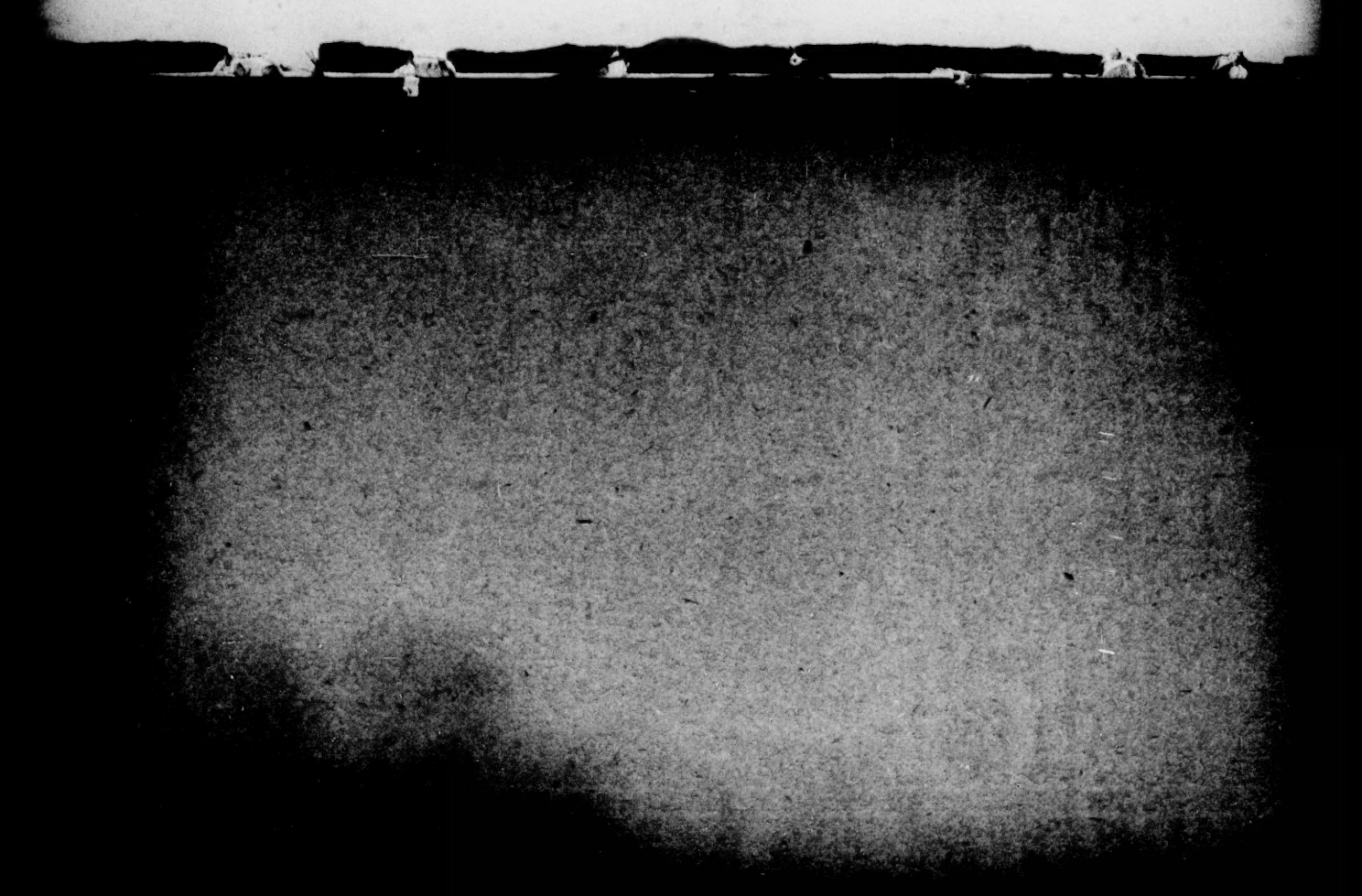
BRIEF AND ARGUMENT FOR RESPONDENT

JOSIAH SULLIVAN.

Counsel for Respondent,

Rochester, N. Y.

ROCHESTER, N. Y.



U. S. SUPREME COURT.

MICHAEL MAGIN, against JOHN J. KARLE.	No. 84.
MICHAEL MAGIN, against JOHN H. LEHMAN.	No. 85.

BRIEF AND ARGUMENT BY JOSIAH SULLIVAN, COUNSEL FOR RESPONDENT.

This is an appeal by complainant from a decision of Justice Blatchford, dismissing the bill of complaint in both actions for want of equity.

Defendants are charged with infringement of the first and fourth claims of U. S. Letters Patent No. 248,646, granted Charles Gordon, of Rochester, N. Y., Oct. 25th, 1881, for "an improvement in apparatus for cooling and drawing beer."

The invention shown and claimed in the Gordon patent by which this object is attained, simply consists in surrounding the supply pipes through which the beer is delivered to the faucet, "with a cold air passage," forming a connection with the ice box in the saloon and the ice box in the cellar in which the beer keg is placed, where it is connected with the supply pipe. The simplicity of this construction renders further explanation unnecessary.

The right granted by said Letters Patent being vested in complainant by assignment.

The infringement of claims one and four are admitted if the Gordon Letters Patent are valid.

The defense is, that whereas the Gordon Letters Patent were granted on an application filed April 23d, 1881, the same apparatus embodying the same elements recited in the claims of the Gordon patent, and operating in precisely the same manner to produce the same result, had not only been generally known long prior to Gordon's alleged invention, but had been in public use for more than two years prior to the application for a patent, and used by one John Meinhard in his saloon in the City of Rochester, N. Y., for at least four years prior to the date of the patent.

The Gordon patent sued on in these cases has been declared null and void by Justice Blatchford in two separate actions brought on said patent on the ground that the invention described therein had been anticipated by an apparatus constructed for one John Meinhardt in the year 1877, and publicly used by him in his saloon in the City of Rochester, N. Y., for four years before date of Gordon patent. The first of these actions was brought by this plaintiff against Eugene Welker and James D. McKay in the United States Circuit Court for the Northern District of New York, and decided in 1886 by Justice Blachford writing the following opinion :

OPINION.

The decision is given in full as follows:

CIRCUIT COURT of the United States for the Northern District of New York. Michael Magin vs. James D. McKay; the same vs. Eugene Welker. Blatchford, J. 24 Fed. Rep., 743.

These suits are brought on letters patent, No. 248,646, granted to Charles Gordon, October 25th, 1881, for "an improvement in apparatus for cooling and drawing beer." The specification says: "My invention relates to an improved apparatus having for its object the

keeping of beer, ale or other liquid at a low temperature during the operation of drawing the same for consumption, and it consists in surrounding the supply pipe through which the beer is delivered to the faucet with a cold air passage for the purpose of maintaining a low temperature in the liquid in the supply pipe. My invention also consists in surrounding the cold air passage and the faucet with a non-conducting jacket, and in the combination with ice box and the lower chamber for storing the beer of the supply pipe and the cold air passage communicating between the ice box and chamber, as hereinafter more fully set forth. A keg of the liquid is placed in a chamber in the cellar. A supply pipe leads upwards from it to the faucet from which the liquid is drawn for consumption. An outer pipe surrounds the supply pipe, leaving an air space around it its whole length from the lower chamber to an upper ice box through which the supply pipe passes, and with which the outer pipe is connected. As many supply pipes as are used may pass through the air space. A non-conducting jacket surrounds the outer pipe. The air cooled by the ice in the ice box and the water produced by the melting of the ice flows down to the air space and reduces the temperature of the liquid in the supply pipe. An air forcing apparatus connected with the keg forces up the liquid. A pipe packed with non-conducting substance surrounds the faucet. There are four claims: First, the combination of the ice box supply pipe, faucet, and cold air passage surrounding the supply pipe; second, the combiuation of the ice box of the supply pipe and faucet, the latter having its jacket; third, the combination with the ice box, supply pipe and faucet of the cold air passage and the non-conducting jacket of the latter; fourth, the combination of the ice box, supply pipe, faucet, lower chamber and cold air passage communicating between the ice box and lower chamber.

In the McKay suit infringement is alleged of claims one and four. In the Welker suit of claims, one, three and four. Gordon made his invention in June, 1879. So far as claims one and four are concerned, this invention was anticipated by an apparatus invented and put in use by one Meinhard, in Rochester, N. Y., in the summer of 1877, and which was continued in use about four years. That apparatus

had the upper ice box, the supply pipe, the faucet, the lower chamber and the cold air passage surrounding the supply pipe and communicating between the ice box and lower chamber. It had three faucets, each with a supply pipe. Each supply pipe led separately to a barrel in the lower chamber, and each was surrounded by a cold air passage created as to its upper part by a surrounding tin pipe, and as to its lower part by a rubber hose which embraced closely the lower end of the tin pipe. The water of the melted ice and the cold air flowed down around the supply pipe into the lower chamber. The lower ends of the three pieces of rubber hose went into the lower chamber through a common opening, and it was not tightly closed around them, but the apparatus was a practical and successful one and embodied the same principal as that of Gordon. It may have been inferior in degree, utility and perfection, but the invention was there and the apparatus continued for nearly two years after Gordon obtained his patent. It did not contain the non-conducting jacket surrounding the outer wall of the cold air passage, which is a feature in claim 3 of patent, but there was no patentable invention in adding a non-conducting jacket to the elements found in claim 1 or to those found in claim 4. The jacket is merely a space filled with non-conducting material to prevent the absorption of heat by the air in the cold air passage. It was common knowledge and not invention to add this to what Meinhard had. The bills are dismissed with costs.

GEORGE B. SELDEN, For the Plaintiff. JOSIAH SULLIVAN, For the Defendant.

And after this decision the complainant made an application for rehearing and leave to put in newly discovered evidence set forth in the moving affidavits, and after argument the motion was denied by Justice Blatchford writing the following opinion :

Circuit Court of the United States for the Northern District of New York. In Equity.

MICHAEL MAGIN, vs. JAMES D. MCKAY.

MICHAEL MAGIN, vs. EUGENE WELKER.

BLATCHFORD, J.

Under the rules laid down and applied in *Colgate vs. Western Union Telegraph Co.*, (*22 Blatchf. C. C. R., 118,*) *in Hicks vs. Otto*, (*Id. 122,*) and in *Spill vs. Celluloid Mfg. Co., Id. 459,*) and the authorities referred to in the last named case, it must be held that the plaintiff has not shown that he could not, with reasonable diligence, have obtained prior to the former hearing, such of the testimony now sought to be adduced as is material to the question involved. The prayer of the petition for a rehearing is, therefore, denied.

JOHN R. BENNETT and GEORGE B. SELDEN,
For the Plaintiff.

JOSIAH SULLIVAN,
For the Defendants.

And some time thereafter this suit was brought against these defendants and decided by Justice Blatchford October 28th, 1889, writing the following opinion : 40 Fed. Rep., 155

DECISION.

MICHAEL MAGIN, vs. JOHN J. KARLE.

MICHAEL MAGIN, vs. JOHN H. LEHMAN,

BLATCHFORD, J.

These are two suits in equity, brought for the infringement of let-

ters patent, No. 248,646, granted to Charles Gordon, October 25th, 1881, for an "improvement in apparatus for cooling and drawing beer." It is the same patent which was involved in the suits of *Magin vs. McKay and Magin vs. Welker*, decided by me in this court August 20th, 1885, (*24 Feb. Rep., 743.*) In the opinion in those cases, the material parts of the specification and the four claims are set forth, and the operation of the apparatus is described. It was there held that, so far as claims 1 and 4 were concerned, the invention was anticipated by an apparatus put in use by one Meinhard, in Rochester, New York, in the summer of 1877, and which was continued in use about four years. A description was given of that apparatus, and it was held, on the evidence, that it was practical and successful, and embodied the same principle as that of Gordon; that it was continued in use for nearly two years after Gordon obtained his patent; and that, although it did not contain the non-conducting jacket surrounding the outer wall of the cold air passage, which was a feature in claim 3 of the patent, there was no patentable invention in adding a non-conducting jacket to the elements found in claim 1, or to those found in claim 4. Infringement of claim 2 was not alleged in those cases. The bills were dismissed on the ground of the prior existence of the Meinhard apparatus.

In the present suits infringement is alleged in each of the claims 1 and 4 of the Gordon patent. The testimony on both sides, taken in the McKay and Welker suits, in regard to the Meinhard apparatus, is introduced in evidence in the present cases, and voluminous proofs in addition have been taken by both parties in regard to that apparatus.

A careful examination of all the evidence, with aid of exhaustive briefs for the respective parties, confirms me in the conclusion at which I arrived in the McKay and Welker cases, that the invention embodied in claims 1 and 4 of the Gordon patent existed in the Meinhard apparatus prior to the time when the invention was made by Gordon, and that that apparatus was practical and successful.

The bill in each case must, therefore, be dismissed, with costs.

JOHN R. BENNETT and GEO. B. SELDEN,
For the Plaintiff.

JOSIAH SULLIVAN,
For the Defendants.

It would seem that upon a disputed question of fact of this kind that the finding and conclusion of the trial court should be conclusive.

The defendants claim that the testimony clearly establishes that Mr. Neuhart put in this apparatus for Mr Meinhard, in his saloon in the summer of 1877, and as first put in by Mr. Neuhart it was complete except that it did not have the coils in the upper ice box nor the rubber hose fastened to the tin pipes surrounding the beer supply pipes creating this "cold air passage," but which coils and rubber hose were put in by Mr. Meinhard two or three weeks thereafter, and remained so and were used by him in his saloon for four or five years thereafter, without any change or alteration whatever, except the removal of the coils from the upper ice box by Mr. Cassabeer in September, 1878.

When the coils were put in or taken out is of no great consequence, as they did not add to nor take from the invention, but only tends to fix the date when the rubber hase was put on, the defendants claiming that it was put on in 1877, and was on when the coils were removed from the upper ice box in 1878. Either date, however, would be prior to date of Gordon invention in June, 1879, but the fact is clearly established that the rubber hose was put on in 1877 and within a few weeks after putting up the apparatus in Meinhard's saloon.

On the question of public use the defendants in this case gave the same and additional like testimony as was given by defendants in the former suits of this plaintiff against the said defendants McKay and Welker, wherein the Court found a fact that the said Gordon inven-

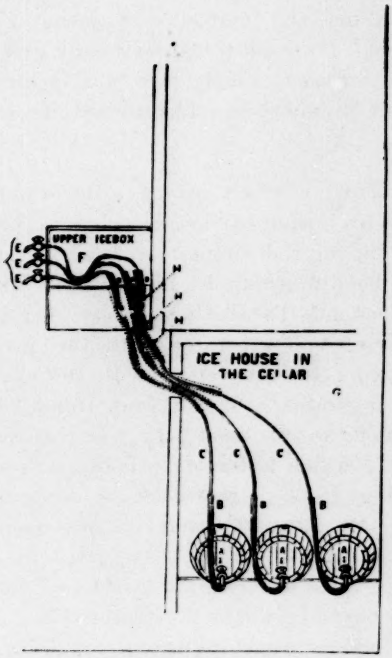
tion had been anticipated by an apparatus put in use by one Meinhard in Rochester, N. Y., in the summer of 1877, and which was continued in use for about four years and the apparatus was a practicable and successful one and embodied the same principal as that of the Gordon patent. The additional testimony given in behalf of defendants in these actions is simply corroborative of the testimony given in 1882 by John Meinhard in said former suits and is substantially as follows:

John Meinhard, a saloon keeper in Rochester, engaged in that business since 1876, introduced into his place of business in Falls Field, in said city, during the summer of 1877, an apparatus for drawing and cooling beer of which he has given in connection with his own sketch (Defendant's Exhibit A) a clear and intelligent description, fully identifying said apparatus with the invention covered by the Gordon patent. In connection with the sketch mentioned of the "Meinhard apparatus," we ask your Honor's attention to the whole of his testimony in this case, both his direct and cross-examination, the reading of which testimony will place your Honor in possession of the leading facts of this case, as the cross-examination of Mr. Meinhard by Mr. Bennett, complainant's counsel, was very full and searching, extending from page 310 to 385 of the printed record, which cross-examination developed facts and circumstances establishing beyond a doubt the truthfulness of his testimony, both on this and said former suits, as will readily be seen on the reading of his testimony and comparing it with the other facts developed during the progress of the trial. (Record Meinhard, pp. 302 to 310, 521 to 529.)

The time when this apparatus was put in and the length of time it was used is not disputed. The only material facts now disputed about the Meinhard apparatus is as to whether or not this apparatus had the tin pipes and rubber hose surrounding the beer supply pipes as described by Mr. Meinhard in 1882 and again in these suits.

When the Meinhard apparatus was put in it did not have the

DEFENDANTS' EXHIBIT "A." MEINHARD APPARATUS.



a. Beer kegs or barrels.
b. Hose and faucet connected with the kegs.
c. Lead pipes for the beer.
d. Tin pipe and wide hose surrounding the beer pipes.
e. Faucets to beer barrels in the ice-house.
f. Upper ice-box in the bar-room.
g. Ice-box in the cellar.
h. Rubber hose surrounding beer pipe *c*, fastened to tin pipe *d*.

rubber hose surrounding the supply pipes, or the coolers in the upper ice box; but it did have the tin pipes soldered in the bottom of the upper ice box. The intention being to dip the water out of the upper ice box, but the boys neglecting to do so the water ran out of the tin pipes and on the saloon floor, except so much as was caught in pails or tubs, and it was this water running over the floor that suggested to Mr. Meinhard putting on the rubber hose, which was done about two weeks after the apparatus was put in, (Meinhard Record, pp. 303, Q. 18–31 ; 525, Q. 44–53.) Meinhard, p. 46, Q. 18–28,) and it remained on continuously from that time until he took the apparatus out of his saloon in Falls Field in 1882 or 1883, and the tin pipes and rubber hose were there when the testimony was taken in said former suits, and could then be seen if plaintiff so desired, and was so testified to by Mr. Meinhard. (Meinhard Record, p. 526 ; X. Q. 61–66.) (Meinhard, p. 306, Q. 48–55 ; X. Q. 237–246; 419–441; X. Q. 553.)

Extract from old case (Meinhard), Record, page 525 :

To Mr. Sullivan :

Q 44. How much of this apparatus described on "Meinhard Exhibit A," did Mr. Neuhart construct ?

A. He constructed all except hose "h," which I put on myself.

Q. 45. Then the pipe "d" put in by Mr. Neuhart did not run into the lower ice box ?

A. No, sir; it did not.

Q. 46. Then when was it that you fastened this rubber hose "h" to the pipe "d" ?

A. I think it was in the latter part of the summer of 1877.

Q. 47. Did the pipe "d" run into the hose "h," and, if so, how far ?

A. It runs in about two inches.

Q. 48. How was it fastened ?

A. It was drawn over the tin pipe and it was so hard to put it on that when on it did not come off.

Q. 49. Did you use any wire in fastening them together ?

A. I did not.

Q. 50. Was it necessary in order to make them fit tight ?

A. It was not.

Q. 51. What effect, if any, did the use of this apparatus have on the beer ?

A. It kept the beer cool.

Q. 52. Did you continue to use this apparatus from the time you put it in in the fall of 1877, for about the term of four years ?

A. I think we used it up to last winter.

Q. 53. Did the use of this apparatus described in "Meinhard's Exhibit A" answer the purpose for which it was constructed, and did it give entire satisfaction ?

A. It did sir.

Extract from this case (Meinhard), Record, page 303 :

To Mr. Sullivan.

Q. 17. Who put the apparatus in for you ?

A. Mr. Neuhart.

Q. 18. Did you make any changes in this apparatus after Mr. Neuhart put it in ?

A. Yes, sir; I did.

Q. 19. Please state what they were ?

A. At first we put in some kind of coils on the bottom of the upper ice-box, so as to put ice on and keep the beer cooler. But afterwards we took those out, because they could not be well cleaned. Then we put on this rubber hose ; that wasn't on before that. That is about all the alterations made on it, as I recollect.

Q. 20. Do you know who it was took out those coils ?

A. I think Mr. Cassebeer took them out.

Q. 21. Does Mr. Cassebeer now reside in Rochester ?

A. Yes, sir; he does.

Q. 22. How long did you use those coils in the upper ice-box ?

A. Only a short while. I am not sure if we had them a couple of weeks or a couple of months.

Q. 23. While using this apparatus did any other plumbers make any alterations or repairs on the same; and, if so, you may state what they were ?

A. I guess. Mr. Barr and Schaub made some repairs there.

Q. 24. What was the length of those tin pipes used in the upper ice-box ?

A. I guess I stated about seven inches long; am not quite sure, about an inch more or less.

Q. 25. Were they fastened into the upper ice-box ?

A. Yes, sir; they were soldered into the bottom of the upper ice box.

Q. 26. Did those tin pipes run above the bottom of the upper ice-box ?

A. Yes, sir; about five or six inches.

Q. 27. Did they also run below the bottom of the upper ice-box ?

A. Yes, sir; about two inches.

Q. 28. How were those rubber hose fastened to the bottom of those pipes ?

A. They were just drawn over the tin pipes.

Q. 29. Were they drawn over tightly ?

A. Yes.

Objected to as leading.

Q. 30. What was the size of those rubber hose which were fastened to the tin pipes ?

A. Very near the size of the tin pipes, so that we had some trouble in drawing them over.

Q. 31. Did you keep ice in the upper and lower ice-boxes ?

Same objection.

A. Yes, we did.

Q. 32. What became of the ice-water in the upper ice-box ?

A. It was flowing down into the lower ice-box.

Q. 33. How did it flow down ?

A. It first ran through to the tin pipes, then through the rubber hose into the lower ice-box.

Extract from this case (Meinhard), Record, page 330:

To Mr. Bennett:

X Q. 419. You are certain that you put the rubber hose around the beer supply pipes yourself, aren't you?

A. The rubber hose I know I put on myself; yes, sir.

X Q. 420. You know, then, that you put the rubber hose around the beer supply pipe yourself?

A. Yes, sir.

X Q. 421. And you did that by just bending it over?

A. Yes, sir.

X Q. 422. And following the direction of the beer supply pipes?

A. Yes, sir.

X Q. 423. You didn't take the beer supply pipes out, did you?

A. I did not.

X Q. 424. You simply slipped it over the beer supply pipes?

A. Yes, sir.

X Q. 425. Did you start first in the cellar?

A. Yes, sir.

X Q. 426. Or start up stairs first?

A. It was started in the cellar. We took the wire off, and put this hose that was so much wider we could put it over very easy.

X Q. 427. How much wider was it?

A. I guess it was about twice as big as the other one.

X Q. 428. What was the diameter of the rubber hose that you slipped over the beer supply pipes?

A. I think they were about an inch. I don't know whether an inch and a quarter outside, or an inch and a half; but they were wide enough to get over the tin pipes in the other ice-box.

X Q. 419. And you did all that yourself?

A. Yes, sir.

X Q. 430. So that really you are the only person who can testifiy as to your putting on those rubber pipes?

A. Well, I suppose some others have seen it afterwards, but when I done it there was nobody else to help, because it was an easy job.

X Q. 431. That is what I mean, that is, that you are the

one only person who can swear to putting on of these pipes, no one having seen you do it?

A. No one see me put it on, I guess.

X Q. 432. How far did these rubber pipes extend into the lower cellar?

A. They just went into the ice-box—perhaps a couple of inches.

X Q. 433. Do you think they extended as much as a couple of inches into the lower ice-box?

A. I think so, just about.

X Q. 434. And how did you fasten the upper end of the rubber hose?

A. I didn't need no wire, because they didn't go on so easy, and so they catched without putting any wire through at all, and just slipped over the tin pipes in the upper box.

A month or two after this apparatus was put in those coils were put in the upper ice box by Mr. Neuhart and remained in until taken out by Mr. Cassabeer, September 7th, 1878. (Meinhard, Defendant, old Record, p. 526; Q. X. 63-81; Cassabeer, p. 457: X. Q. 587-618.) (Cassabeer bill, p. 368., Defendant's old Record.)

Extract from old case (Meinhard) Record, p. 526.

To Complainant's Counsel:

X Q. 61. Does this apparatus, which the Neuhardts put in for you, still remain in your saloon?

A. Yes, sir.

X Q. 62. The whole of it?

A. Not exactly the whole thing.

X Q. 63. How much of it remains?

A. We had put in after the first apparatus wasn't quite satisfactory, Mr. Neuhardt had put in coils in connection with the beer pipes, and those have been taken out afterwards and we have put in straight pipes again.

X Q. 64. When was it that Mr. Neuhardt had put in these coils?

A. This was done in the summer of 1877.

X Q. 65. How long after the first apparatus was put in were the coils put in?

A. I can't say this—it may be a few weeks afterwards—may be a couple of months afterwards; I don't recollect now.

* * * * * * * *

X Q. 78. Did the coils work better than the bent pipes?

A. They kept the beer better—cool—but could not be so well cleaned; therefore we took them out again.

X Q. 79. How long did you use the coils?

A. Don't know exactly how long, only a short time.

X Q. 80. For two weeks or two months?

A. I can't say.

X Q. 81. What has become of the coils?

A. I got them yet.

X Q. 82. You haven't used them since you have taken them out?

A. I have not.

Extract from this case (Meinhard) Record, p. 306.

To Mr. Sullivan:

Q. 48. Who took this apparatus out of your saloon in Falls Field?

A. I am not quite sure. Some man I had to remove things from the place, but I recollect that Albert Stief was one of the helpers.

Q. 49. Were those tin pipes and rubber hose which were fastened to them, in this apparatus when you took it out of your saloon on the occasion of your removal to Germania Hall?

A. Yes, sir; they were.

Q. 50. Was this beer-cooling apparatus in your saloon in Falls Field when you testified in the cases of this plaintiff against Welker and McKay?

A. Yes, it was.

Q. 51. Did you so testify in that case?

A. I think I did.

Q. 52. Could this apparatus have been seen there at that

time by Mr. Magin or his counsel if they had visited your saloon?

A. It could be seen; but, as much as I know, nobody asked for it.

Q. 53. Would you have shown it to them had they called?

A. I would.

Q. 54. Have you any part of that apparatus now? and if so, you may state what part of it?

A. Yes, the faucets and part of the tin pipes—oh, no, that is wrong; the lead pipes, I intended to say.

Q. 55. Did this apparatus, while in use, answer the purpose for which it was intended, and give satisfaction?

Objected to.

A. It did.

Extract from this case, (Cassabeer) Record, page 457.

To Mr. Bennett:

X Q. 590. What did Mr. Meinhard say to you?

A. He showed me his book when he paid me his first account.

X Q. 591. Did he show you the bill which you rendered him for the work?

A. He showed me the book where he paid me $11 for the first work I done for him.

X Q. 592. Did he show you the bill which you rendered him for the work?

A. No, sir.

X Q. 593. He showed you where he had paid you $11, did he?

A. Yes, sir.

X Q. 594. And that was all?

A. Yes, sir, in the year 1878.

X Q. 595. In the year 1878?

A. Yes, sir.

X Q. 596. What time in the year 1878?

A. In the summer or fall of 1878.

X Q, 597. Which was it, the summer or fall?

A. Somewhere probably around in the fall he paid me; October the 29th he paid me.

X Q. 598. Now, why did you say it was the summer or fall, when you knew it was the 28th of October, 1878?

A. That is all right. The work might have been done in a few months before that and the bill not rendered.

* * * * *

X Q. 611. All you saw at Mr. Meinhard's was that he paid you eleven dollars on the 29th of October, 1878?

A. Yes, sir.

X Q. 612. You don't know what it was for?

A. Yes, sir, I know it was for coolers, and that was done at the same time.

X Q. 613. Then it was for both?

A. Yes, sir, for repairs in general at different places.

X Q. 614. It was for everything he owed you up to that time?

A. Yes, sir.

X Q. 615. Now, are we to understand that you never did a job of any kind for Mr. Meinhard prior to the work included in this payment of eleven dollars?

A. Yes, sir.

X Q. 616. So that the first work you ever did for Mr. Meinhard must have been a short time prior to the 29th of October, 1878?

A. Yes, sir.

X Q. 617. And this you stick to?

A. Yes, sir.

X Q 618. Notwithstanding what you may have testified to yesterday?

A. Yes, sir.

COMPLAINANT'S EXHIBIT—G. F. S.

Oct. 26th, 1887.

Rochester, N. Y., Oct. 22d, 1878.

Messrs. GILBERT & MEINHARDT,

Bought of A. CASSABEER,

Plumbers and Gas Fitters, and dealers in Plumbers' Materials and Water Fixtures, Bath Tubs, Water Closets, Urinals, Boilers, &c., put up in the best manner. All work done at reasonable prices. City and Country work promptly attended to.

174 West Main St., cor. Washington.

May 16—To 11 3-8 fittings, 8,	. . . . .	$ .88
To 21 feet 3-8 pipe, 5,	. . . . .	1.05
Time, gas fitters fitting gas pipe,	. . .	3.37
Sept. 6—To 14 3-4 feet 1-2 inch iron pipe, 5 cts.,	. .	.75
Time, plumber fixing pipe,	. . . .	1.25
To 4 fittings, 8,	. . . . .	.32
Sept. 7—One compression basin cock,	. . . .	1.50
2 lbs. solder and 1-2 dozen hooks,	. . .	.78
Time, Plumber fixing pipe,	. . . .	1.25
		$11.13

Rec'd payment,

A. CASSABEER,

Per Penny.

Mr. Meinhard, in his former testimony, was of the opinion that the coils were taken out in 1877. (Defendant's old Record Meinhard, p. 526, X. Q. 64–80) and so stated in the fore part of his testimony in this case, (Meinhard, p. 304, Q. 17–29, p. 311; X. Q. 115–137), but having found on this trial Cassabeer's bill and Meinhard's book, he fixes the date at September 7, 1878 (the bill was paid October 29, 1878, as appears on his books), having left the coils in there a little longer than he supposed. The witness, Meinhard, is fully corroborated by documentary evidence, and by all of the witnesses called on behalf of the defense, and by some of the witnesses called on behalf of the complainant, including Mr. Bartholomay, by whom the complainants expected to weaken the force of Mr. Meinhard's testimony, by prejudicing, if possible, Mr. Bartholomay against Mr. Meinhard, (Bartholomay printed record, p. 263–272), but in that they failed.

Albert Stief, assistant bar-tender for Meinhard, from 1877 to 1881 or 1882, testified that he was working for Mr. Meinhard in his saloon in 1877, when this apparatus was put in, and was familiar with its construction, and describes how the supply pipes ran through the tin pipes and rubber hose and into the lower ice box, and had occasion every day during four or five years while working for Mr. Meinhard to use this apparatus, and also assisted in taking this apparatus out of Falls Field in 1882 or 1883, when Mr. Meinhard removed to Germania Hall, and then again saw this apparatus with the tin pipes and rubber hose surrounding the beer supply pipes, and could be seen in Falls Field at the time.

(Printed Record, p. 281; Stief Q. 7–23, p. 293; X. Q. 193–211.)

Adolph Cassabeer, of Rochester, N. Y., a plumber by trade, took the coils out of the upper ice box in Meinard's apparatus in 1878, and then examined this apparatus and saw the tin pipes and rubber hose around the supply pipes, which he describes fully, clearly and positively. He fixes the time by his and Mr. Meinhard's account books. In fact he could not well take the coils out without seeing the tin pipes, and when he made an affidavit in 1885, on motion for rehearing, he examined his books and then fixed the time of taking out the coils, and repairing this apparatus in 1878.

Printed Record, Cassabeer, p. 457–472, X Q. 587–48, X Q. 823–847.

I think the full and exhaustive cross-examination of Mr. Cassabeer removed all doubts even in the mind of complainant's counsel as to when the rubber hose was put on and the coils taken out of the upper ice box.

The witness, Barr, also a plumber by trade, in the year 187?, did some work on this apparatus in repairing the lead pipes, but did not remember the whole of the construction of this apparatus, and was only called by defendants to show the fact that he made certain repairs in the lower ice box, and saw the tin pipes in the upper ice box, he not being able to recall the fact of having seen the rubber hose over the supply pipes; but on his cross-examination, which was tedious and exhaustive, he got the construction of parts of this apparatus confounded with one of the many other apparatus he has put in. (Barr, p. 386, Q. 4–9, X Q. 120–123; (Barr Affidavit, Record, p. 537, verified Dec. 20, 1885.

From which affidavit it appears that at that time in 1885 he did not pretend to give the construction of the whole of the Meinhard apparatus, but only that portion which he saw in the lower ice box, and the tin pipes in the upper. The complainant's counsel tried to make it appear by this witness that he saw the coils in the upper ice box in 1879, but in that he failed.

In this connection and to corroborate, if necessary, Meinhard, Barr and Cassabeer, I now call your Honor's attention to testimony of Ernst J. Schaub, also a plumber by trade, who repaired this apparatus in 1878, at the same time he was working on the Boehm apparatus, and at that time carefully examined and inspected the Meinhard apparatus and saw these tin pipes and rubber hose surrounding the beer supply pipes, and gives a full and exact description of the apparatus, and recalled the fact that while repairing the apparatus in the lower ice box, he had to turn up the ends of the pipes to prevent his fire from being put out by the water flowing down over the beer pipes

into the lower ice box. (Printed Record, p. 480 to 483; Schaub Q. 5–50; X Q. 195–203; X Q. 257–267.) Also saw parts of the old apparatus in Germania Hall in 1883. Q. 45–50; X Q. 600–630.)

Record, page 480 (Schaub):

To Mr. Sullivan:

Q. 4. How long have you been carrying on business for yourself?

A. For the last twelve years.

Q. 5. Did you know Gilbert & Meinhard who kept a saloon in Falls Field in this city?

A. Yes, sir.

Q. 6. Did you at any time do work for them on a beer-cooling apparatus they had in their saloon?

A. Yes, sir, I did.

Q. 7. When was that?

A. That was in the year 1878, towards fall.

Q. 8. What work did you do on this apparatus?

A. Repairing work, at this time.

Q. 9. Please state the kind of repairs you made?

A. They broke two of the lower beer pipes off, which is connected to the beer kegs.

Q. 10. While making those repairs did you examine this apparatus?

A. I did.

Q. 11. What was this apparatus used for?

A. This apparatus was used for drawing and cooling beer.

Q. 12. Please describe this apparatus which you repaired on this occasion?

A. The apparatus was two ice-boxes, one built on the upper floor, a small one, and a larged sized one in the cellar; he had ice in the upper box, and some in the lower; the upper box had linings inside, of zinc, and the lower box was only part lined—in the place where the ice was laying; from the upper to the lower box ran the beer pipes, which was connected to the beer kegs and up to the upper faucets in the

upper box; the beer pipes went through three tin pipes, each one separate; from the tin pipes down to the lower ice-box went the piece of rubber hose, which was shoved over the tin pipes and about six to eight inches in length, into the lower box.

Q. 13. Were those rubber hose fastened to the tin pipes?

A. Yes, sir, just shoved over, air-tight and water-tight.

Q. 14. What was the length of those tin pipes?

A. The length was about 12 inches, I would say, 10 to 12.

Q. 15. Did the tin pipes run into the upper ice-box?

A. Yes, sir, about three or four inches above.

Q. 16. What became of the ice-water in the upper ice-box?

A. It run down to the lower one.

Q. 17. How?

A. It followed up the beer pipes and went on the beer kegs.

Q. 18. How did the water get out of the upper ice-box?

A. It went through those tin pipes, and then into the rubber hose, and from there into the lower ice-box—followed up the pipes, and partly on the side it went out.

Q. 19. What pipes do you mean?

A. The beer pipes.

Q. 20. What was the length of those rubber pipes which surrounded the beer pipes?

A. Three to four feet, from the upper ice-box to the lower; I didn't take no measure of them, that was by guess.

Q. 21. What was the diameter of those beer supply pipes?

A. Three-eighths.

Q. 22. What was the diameter of the tin pipes?

A. The tin pipes was an inch.

Q. 23. And what was the diameter of rubber hose which surrounded the tin pipes?

A. That was inch pipe two inch hose.

They say Schaub is violently prejudiced. "Well, he says he felt insulted when Gordon told him, when this suit came to trial, he (Schaub) would not know anything about it. He told Magin and

Gordon when he first saw Gordon's Letters Patent, that he made the same apparatus seven years before that, and that it was a worthless patent, and told Magin that if he had spoken to him before he bought the patent he would have told him all about it. At the same time the witness told Magin and Gordon about the Boehm apparatus, and admits that he feels hurt because he put the first apparatus in seven years before that, to-wit, 1876, and never thought that a patent right could be taken out on it because they got it in Germany for 25 years or more." (Printed Record, page 585.)

The complainant undertakes to overthrow this strong and positive testimony by calling four or five witnesses who worked for Mr. Meinhard in his concert hall as waiter boys, who had no occasion to examine this apparatus in his saloon, which was separate from the concert hall. (Meinhard Printed Record, X. Q. 1058–1091 ; Stief, p. 290, X. Q. 148–157.

It will be noticed that their testimony is entirely of a negative character, which is perfectly consistent with what Meinhard stated in his testimony and affidavit to the effect that those witnesses had no occasion to use or examine this apparatus, and could not be familiar with its construction. (Meinhard Affidavit, p. 534 Record)

None of these witnesses, except Otto Schantz, worked in the saloon, and could not and did not know anything about the construction of this apparatus except as they have been told by Otto Schantz, who procured them to testify in these cases. The witness, Schantz, has shown himself, by his own testimony, utterly unworthy of credit. In the former trial Mr. Meinhard was asked who his bar-keepers were during the time he used this apparatus, and he gave their names as Otto Schantz, Felix Guenther, and Fred Guthecker, he did not give the names of any of the other witnesses called by complainants because they were not employed in the saloon but only on Sunday as waiter boys in the beer garden. (Meinhard Printed Record, p. 529, Q. 116-117)

Felix Guenther was in Germany and his testimony could not be secured.

Upon reading the testimony of complainant's witnesses, Raymond Stief, Otto Hahn, George J. Englert, and John V. Englert, it will at once be seen that they are testifying about an apparatus they knew nothing about except as they were told by Otto Schantz since the former trial of these Magin suits.

As evidence of the want of knowledge on the part of these witnesses about the Meinhard apparatus, I desire to call your Honor's attention to the following facts, among others which appear in this trial, showing that these witnesses knew nothing about the construction of the Meinhard apparatus.

The witness, Otto Hahn, says that each supply pipe had a separate hole in the saloon floor and lower ice box. (Printed Record, Hahn, p. 102, X. Q. 300–315; R. D. Q. 401–403.) He protests too much. (Hahn, p. 90–95.) All the other witnesses say the pipes entered the same hole in the lower ice box.

The witness, George J. Englert, was one of those waiter boys who worked in the concert hall, and could know nothing of this apparatus. He states a circumstance in answer to Q. 111, p. 115, which, to say the least, is very strange, and bears upon its face unmistakable evidence of untruthfulness, and only goes to show to what desperate means the complainant has resorted to in order to overthrow, if possible, defendants' testimony and the former decision of the Circuit Court. The evidence in this case by witnesses who were in a position to know, is that there was no gas jet near those beer supply pipes, and if there ever was one there, Mr. Meinhard, a careful business man, would not allow it to remain there very long endangering those beer supply pipes.

The witness, John N. Englert, is another of Schantz's discoveries, for he says he never worked for Mr. Meinhard, but was engaged in driving a beer wagon for some brewery, and delivered beer to Mr. Meinhard, which certainly would give him no occasion to see or ex-

amine this apparatus, and could know nothing of its construction except as he was told by some one, and that person was Otto Schantz. As evidence of his want of knowledge as to what he was testifying about, I call your Honor's attention to the fact that he states the upper ice box was built into the counter of the saloon. (Printed Record, Englert, pp. 246, 248 ; X. Q. 58 to 85.) When in fact this upper ice box was behind the bar counter, and at least two or three feet removed from it. He also says that the ice house in the cellar was west of the ice box containing the beer (Englert, X. Q. 140-143), when in fact the ice was kept in the same box as the beer.

Complainant's counsel realizing the strength of defendants' case on the Meinhard apparatus undertook to discredit Mr. Meinhard and Mr. Schaub by showing errors in some trifling matters, for instance, he elicted the fact from Mr. Meinhard on cross-examination that he was not a member of the Saloon Keepers' Association of Rochester, N. Y., who has assumed the defense of these suits. (Record, Meinhard, p. 474, Q. 867–908.) And then called Mr. Weider, the secretary of this association, to show that he was, by showing that his name rppeared in the book containing a list of members of said association, but utterly failed in his undertaking, as it was conclusively proven that Mr. Meinhard never attended any of its meetings, neve paid any initiation fee, and never was a member of the association, his name having been handed in by some member, a friend of his, and he was notified of the fact, but never attended a meeting or became a member of the association. (Record, Weider, p. 77, X. Q. 40-47.)

Again, by giving in evidenee a note written by Mr. Meinhard to defendants' counsel, stating that he was unable to attend for cross-examination because he was sick. (Printed Record, Cassabeer, p. 479; X Q. 958–961; also Meinhard note, p. 480.) How that note tends to discredit Mr. Meinhard I am unable to see, but I suppose it was the best complainants' counsel could do, as Mr Meinhard is above reproach, and is one of our most respected German citizens, standing second to none in the community for honesty and sturdy integrity.

Mr. Bartholomay, one of complainants' witnesses on cross-examination says: "I always took Mr. Meinhard for an honest man, and just as honest as I could expect a man to be." (Printed Record, p. 268, Bartholomay X Q. 84.) Nothing was left undone, however, by complainant's counsel to annoy and harass Mr. Meinhard, who is a man nearly 60 years of age, and who was kept on the stand under cross-examination and away from his business for several days, his testimony on cross-examination occupyiug 104 pages of defendants' printed record, and late in the afternoon of the last day Mr. Meinhard became much annoyed and irritated by the conduct of complainant's counsel, and was made to appear on the record as reflecting on Mr. Bartholomay's veracity, which was foreign from his intention, as Mr. Bartholomay is a personal friend of his and a man he respects highly. And complainant's counsel having obtained from Mr. Meinhard a few unguarded statements as to his opinion of Mr. Bartholomay, and in order to discredit Mr. Meinhard, if possible, called Mr. Bartholomay on the stand, after Mr. Magin had informed him that Mr. Meinhard had testified ihat he would not believe him under certain conditions, etc., which was untrue, as Mr. Meinhard had not so testified, and Mr. Bartholomay, taking the stand under these circumstances and without having an opportunity of speaking to Mr. Meinhard, expressed his surprise that Mr. Meinhard should have so testified about him, adding: "I always took Mr. Meinhard for an honest man, and just as honest as I could expect a man to be." (Record, p. 268, Bartholomay X Q. 84,) while in fact Mr. Meinhard had not so testified, But notwithstanding Mr. Bartholomay's annoyance in the matter, complainant's counsel was unable to get him to in any way discredit Mr. Meinhard. (Bartholomay, p. 268, X Q. 80–90.) While Mr. Bartholomay was on the stand he was asked certain questions about Meinhard's apparatus which corroborated Meinhard's testimony, he having testified that he made two or three changes in his apparatus at the suggestion of Mr. Bartholomay, one of which was the taking out of these coils. (Record, Meinhard, p. 333; X Q. 469–476;) Record, Bartholomay, p, 268; X Q. 53–65,) and also showing that M. Bartholomay gave Magin his "idea" of the apparatus, telling him to put in a short, straight pipe. Was it not Bartholomay who told Magin to put in this apparatus,

and afterwards Gordon saw it and applied for letters patent? (Record, Bartholomay, p. 269; X Q. 95–107.)

Complainant having utterly failed to discredit Mr. Meinhard, also undertook to discredit Mr. Schaub by calling Mr. Magin, the complainant, and Gordon, the patentee, who testified in substance that in conversation with Mr. Schaub in 1883; and while the former suits were pending, Schaub made certain statements to them which, if true, would tend to discredit him. The alleged statements are so highly improbable that they are deserving of little or no consideration.

And the fact that Mr. Magin and Mr. Gordon never mentioned these alleged statements of Mr. Schaub until they mentioned them to Mr. Bennett during the taking of the testimony tn these cases, notwithstanding they had been examined in the former suits after these alleged conversations, as well as having made affidavits for a rehearing in said former suits, is another very strange circumstance going to show that these alleged statements of Schaub was an afterthought and a very unwise act on the part of complainant in his desperation to succeed in these suits by any means, fair or otherwise. (Record, p. 217; Gordon X. Q. 42-46; Magin, p. 226, X. Q. 31-40, 63-64.)

Certainly the negative testimony of complainant's witnesses as to the construction of the Meinhard apparatus is not as reliable as the positive testimony of defendant's witnesses, Schaub, Barr and Cassabeer, three old and experienced plumbers, who repaired this apparatus, and Mr. Meinhard and Mr. Stief, his assistant bartender from 1877 to 1881, corroborated by documentary evidence as to dates, etc., relating to the matter here in controversy. Neither is the plausible theories or vivid imagination of plaintiff's counsel as to the construction of this Meinhard apparatus as reliable or satisfactory as the testimony of credible witnesses, corroborated by documentary evidence of ten years' standing.

In the former suits it was conceded and taken for granted by all parties that Meinhard had used just such an apparatus as he describes and for the length of time stated, and nowhere in complainant's brief or in the discussion of the former suits was the existence and use of the Meinhard apparatus, as described by him, ever questioned. And not until after an adverse decision was rendered did they resurrect this man Otto Schantz

and set him to work to obtain these concert hall lads to testify to the construction and use of an apparatus which they had no occasion to use and examine, and could know nothing of its construction and operation.

In my brief in said former suits, in speaking of the Meinhard apparatus, I stated as follows:— "The only difference in the con- "struction of the Meinhard and Gordon apparatus is that in the "Meinhard apparatus the hole in the lower ice-box where the sup- "ply pipes entered was made larger than was necessary, being a six- "inch opening (Meinhard, page 11, Q. 289) and each supply pipe "had a cold air passage of its own, while in the Gordon apparatus "one large pipe forms the cold air passage for all the supply "pipes."

In complainant's brief in said former suits, in speaking of the Meinhard apparatus, and as showing that complainants never doubted that Mr. Meinhard had, and used just such an apparatus, as he testified then and testifies to now.

I quote from complainant's old brief, page 6:— "A weak at- "tempt is made by the defendant to prove a case of prior use, by the "witness Meinhard, but as he admits that there was an open hole in "the top of his lower ice-box (X. Q. 88–91), the matter need not be "further discussed."

And again, in complainant's brief, in reply, page 4-5, I quote:— "It does not contain the cold air passage of the Gordon patent and "therefore requires no comment, in view of the fact that Meinhard "had given up the use of his rubber tubes, which did not constitute "the cold air passage, and had gone back to drawing beer directly "from the keg (Defendants' Record, page 9), this device cannot be "considered as anything more than an abandoned experiment. "Besides his ice-box had so large a hole in it (page 11), that it can "hardly be considered as an ice-box at all. The Gordon invention "is not found in the Meinhard apparatus at all. The defendants "have taken nothing from Meinhard, but have appropriated the "advance in the art made by Gordon."

In which construction of the patent law complainants counsel was mistaken, as established by the decision of Justice Blatchford in said former suits.

It will be seen from the above extracts that in 1882 complainants counsel admitted that the Meinhard apparatus had the rubber tubes on, and what were they put on for except to carry off the water in the upper ice-box. I care not whether the rubber tubes were $\frac{3}{4}$ or an inch, either size was large enough to admit a $\frac{1}{4}$ or $\frac{3}{8}$ inch beer pipe and carry off the surplus water, which was but little anyway, and if any were used they were at least $\frac{3}{4}$ inch inside diameter.

Record, page 235 (Witherspoon):

To M. Sullivan.

X. Q. 30. And what was the ordinary size water attachment used for sprinkling purposes at that time?

A. Three-quarters inch pipe, with a quarter inch orifice.

X. Q. 31. What would be the size of a hose which would fit on such an attachment?

A. That is the size of the hose.

X. Q. 32. Would the hose be three-quarters inside or outside?

A. Would be three-quarters inside diameter.

X. Q. 33. That would be about an inch outside, I suppose?

A. Yes, sir; I should think so.

X. Q. 34. That is the ordinary size hose used for such purposes?

A. Yes, sir; the same as everybody uses for ordinary sprinkling.

What was the object of having the beer pipe in the upper ice-box bent goose-neck shape, except to go through the tin pipes? See "Defendant's Exhibit A, Meinhard Apparatus." This sketch was made in 1882, when there was no question about the exact construction of this apparatus.

Much has been said by complainant's counsel during the taking of the testimony about the impropriety of a number of saloon-keepers in this City uniting to defend against these Letters Patent. Well, what of it? The saloon-keepers are simply and only doing that which is right and proper they should do, protecting themselves against an attempt on the part of this plaintiff to compel them to pay tribute to him for an invention which has been common property for many years before the date of these Letters Patent, and so known to them.

This is one of the numerous cases brought to the attention of the Courts where a party obtain letters patent for an invention which had become public property many years before his application was filed.

If for any reason your Honor thinks that the defendants are not entitled to judgment in their favor in the Moinhard apparatus, then I ask that an oral argument be granted on the Boehm apparatus, as it was only briefly alluded to on the final hearing in these actions and I have not referred to it in my brief, relying on the Meinhard Aapparatus being fully and clearly proven.

The reason why defendants' witnesses in these cases were not called by the defendants in the former suit was owing to the fact that there was no question then made, but that Meinhard used the apparatus he described; but complainant's counsel claimed in the law that it did not anticipate the Gordon Patent, because the hole in the lower ice-box was a little larger than was necessary to admit the beer supply pipes, and that being admitted, I only examined Mr. Meinhard at that time, whose testimony was not questioned or contradicted, relying more particularly on the Boehm apparatus as it did not have that supposed objectional hole in the lower ice-box, but on that proposition of law complainant's counsel was in error, as subsequently decided by Justice Blatchford in said suit, and now complainant's present counsl changes front and undertakes to reverse that decision by trying to show that defendant's witnesses have sworn false and are not to be believed because after a searching cross-examination they differ in some minor matters about this apparatus from that contained in their affidavits made in the former suit on motion for re-hearing; but upon comparing their testimony given in these causes with said affidavits, it will at once be seen that they substantially agree, having the unmistakable evidence of truth and sincerity running all through their testimony.

The reputation of defendant's witnesses for truth and veracity is not questioned and cannot be questioned, their testimony is positive,

and corroborated by documentary evidence and not contradicted except by the negative testimony of plaintiff s witnesses. Can it be possible that all of defendant's witnesses, old and respected German citizens, inexperienced in giving testimony, can take the witness stand and manufacture this positive proof about the Meinhard Appartaus, and submit to such a thorough cross-examination and not be found out, arrested and convicted of rank perjury.

In conclusion, I would suggest to this Honorable Court that a full knowledge of the existence or non-existence of the Meinhard apparasus, as described by Mr. Meinhard, can be obtained by reading the testimony, and particularly the cross-examination of the witnesses, Meinhard, Cassabeer and Schaub, for defendants, and the testimony of Schantz, Stief and Hahn for complainants. As they are the witnesses on both sides most familiar with the construction of the Meinhard Apparatus.

There is so much irrelevant matter in the record that I have taken the liberty in this brief to refer your to Honors specifically to the questions and answers bearing on each particular point here plaintiff's defendant's entire testimony occupied thirty pages and defendant's cross-examination two hundred and eighty-five pages of defendant's record.

I also annex hereto a copy of my printed reply to complainants' printed argument used before Justice Blatchford on final hearing, which may aid this Honorable Court in arriving at the facts in this case.

Defendants' counsel does not neem it necessary to refer your Honors to any authorities, holding that such public use as defendants have proven in this case is sufficient to annul the Gordon Letters Patent.

Defendants respectfully submit that the judgment of the Circuit Court should be affirmed.

JOSIAH SULLIVAN,
Defendant's Solicitor,
Rochester, N. Y.

U. S. Circuit Court

NORTHERN DISTRICT OF NEW YORK.

IN EQUITY.

MICHAEL MAGIN, against JOHN J. KARLE.	No. 5,617.
MICHAEL MAGIN, against JOHN H. LEHMAN.	No. 5,618.

DEFENDANT'S REPLY TO COMPLAINANT'S ARGUMENT, BY JOSIAH SULLIVAN, DEFENDANT'S COUNSEL, BEFORE JUSTICE BLATCHFORD.

IF YOUR HONOR PLEASE: I did not intend to burden the Court with any more reading matter in these suits, knowing that your Honor will read all the testimony in the case; but after reading complainant's brief just to hand, and seeing so many ingenious misstatements and fine-spun theories advanced—intermingled with a confusion of

dates and facts, claimed to be established—tending to mislead and confuse the mind of the Court, I have concluded to make this reply to aid the Court in arriving at the facts in this case, and in so doing will review complainant's argument in the order in which he presents it. Premising by saying that a stranger, in reading complainant's brief, would suppose that this immaculate gentleman (complainant's counsel), on his visit to Rochester, had fallen into a den of rascals and perjurers, constituting the defendant's witnesses in this case; and his whole argument is based on that false assumption, of which fact I think your Honor will become satisfied upon reading the testimony in the case, as well as the argument of counsel.

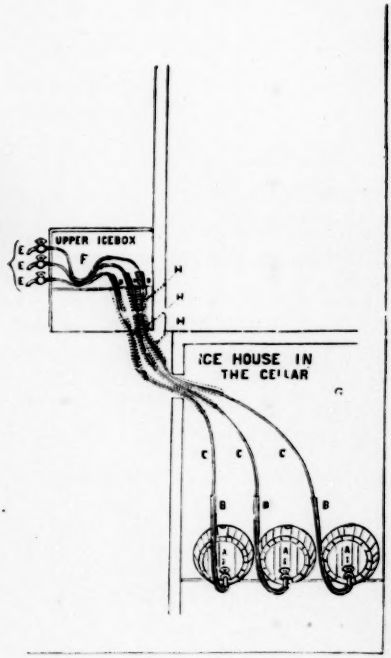
It is now more than a year since I handed in my brief, and in order to prepare this reply I have re-read the testimony, and in the light of complainant's brief, am fully convinced of the propriety of the suggestion I made in my original brief, in which I stated as follows:

"That a full know edge of the existence or non-existence of the Mein-"hard apparatus, as described by Mr. Meinhard, can be obtained by "reading the testimony, and particu arly the cross-examination of the "witnesses, Meinhard, Cassabeer and Schaub, for the defendants, and "the testimony of Schantz, Stief and Hahn for comp ainants, as they are "the witnesses on both sides most familiar with the construction of the "Meinhard apparatus."

And at the outset of this reply I desire once more to call your Honor's attention to the date when Mr. Meinhard put in this apparatus, which date he fixed in his former testimony given in 1882, in the Welker case, and again in his testimony given in these suits in 1888; and having those dates fixed settles an important starting point, and only second to establishing the existence of this apparatus as described by Mr. Meinhard on both of said occasions.

The defendants claim that they have proven beyond any question that Mr. Neuhart put in this apparatus for Mr. Meinhard, in his saloon in the summer of 1877, and as first put in by Mr. Neuhart it was complete except that it did not have the coils in the upper ice box, nor the rubber hose fastened to the tin pipes, but which coils and

DEFENDANTS' EXHIBIT "A." MEINHARD APPARATUS.



a. Beer kegs or barrels.
b. Hose and faucet connected with the kegs.
c. Lead pipes for the beer.
d. Tin pipe and wide hose surrounding the beer pipes.
e. Faucets to beer barrels in the ice-house.
f. Upper ice-box in the bar-room.
g. Ice-box in the cellar.
h. Rubber hose surrounding beer pipe *c*, fastened to tin pipe *d*.

rubber hose were put in by Mr. Meinhard two or three weeks thereafter, and remained so and were used by him in his saloon for four or five years thereafter without any change or alteration whatever except the removal of the coils from the upper ice box by Mr. Cassabeer in September, 1878.

These facts were testified to by Mr. Meinhard in the Welker suits in 1882, and not denied or contradicted at that time by the complainant or his counsel. In fact, complainant's counsel admitted in those suits the existence of the Meinhard apparatus as described by him, having the tin pipes and rubber hose surrounding the supply pipes; but claimed that the Meinhard apparatus as then described by Meinhard did not anticipate the Gordon invention, because the hole in the lower ice box through which the supply pipes entered was a little larger than was necessary to admit the pipes. His admission being contained in his brief in the following words:

I quote from complainant's old brief, page 6:

> "A weak attempt is made by the defendant to prove a case of prior use by the witness Meinhard, but as he admits that there was an open hole in the top of his lower ice box (X Q. 88-91), the matter need not be further discussed."

And again, in complainant's old brief in reply, p. 4–5, I quote:

> "It does not contain the cold air passage of the Gordon patent, and therefore requires no comment, in view of the fact that Meinhard had given up the use of his rubber tubes, which did not constitute the cold air passage, and had gone back to drawing beer directly from the keg, (defendant's record p. 9,) this device cannot be considered anything more than an abandoned experiment. Besides, his ice box had so large a hole in it (p. 11) that it can hardly be considered an ice box at all. The Gordon invention is not found in the Meinhard apparatus at all. The defendants have taken nothing from Meinhard, but have appropriated the advance made in the art by Gordon."

In which construction of the patent law, complainant's counsel was mistaken, as established by the decision of this Court in said former suits.

It will be seen from the above extracts that in 1882 complainant's counsel admitted that the Meinhard Apparatus had the rubber tubes on. I care not whether the rubber tubes were 3-4 or an inch. Either size was large enough to admit a 1-4 or 3-8 inch beer pipe and carry off the surplus water, which was but little anyway, and create a cold air passage. What was the object of having the beer pipes in the upper ice box bent goose-neck shape, except to go through the tin pipes? See "Defendant's Exhibit A, Meinhard Apparatus." This sketch was made in 1882, when there was no question about the construction of the Meinhard apparatus.

Which admissions of complainant's counsel were made in 1882, and I am sure are much more convincing and consistent with the testimony than the charge now made by complainant's present counsel, that the testimony upon which these admissions were based, was false, and that the witnesses who testified to these facts in 1882 and again in 1888 are "liars and perjurers," as charged by complainant's counsel in his brief. What grounds, if any, he has for making these serious charges against reputable citizens of our city, your Honor will judge after reading the testimony. These admissions of complainant's counsel, made in 1882 in the former suits, were based upon the testimony then given by Mr. Meinhard, and if true then, it is true now, and is as follows:

[I quote from page 2 to page 11, defendant's old record.]

By Mr. Sullivan:

Q. 4. Did you at any time, and if so, you may state when, place in your saloon an apparatus for drawing and cooling beer?

A. I did have one put in the summer of 1877.

Q. 5. Who put it in for you?

A. Mr. Neuhart; don't know his first name; there is a father and son; the son's name is Emil; I think the father's name is Michael; I don't know which did the business and had charge of it; they were both there at the time.

Q. 6. Which of them did you pay for this apparatus?

A. I think I paid it to the old man; I got a bill; if I had that with me it would show.

Q. 7. How long did you continue using this apparatus?

A. About four years.

Q. 8. For what purpose was this apparatus used in your saloon?

A. It was used to draw the beer from the large ice house in the cellar, and especially to keep it always cool in summer.

Q. 9. Will you please describe this apparatus; that is, the construction of it, how it was used, and how worked?

A. There is a small ice box in the bar room, with three faucets; those three faucets are connected with lead pipes with the ice box in the cellar; those lead pipes are surrounded by small tin pipes in the bottom of the upper ice box, and afterwards by rubber hose reaching down to the ice house in the cellar so as to allow the ice water of the upper box to flow down around the lead pipes to the ice house in the cellar; the upper ice box is about 2 feet by 2 feet by 2½ feet thick; the lower ice house or box is about 8 feet by 8 feet by 12 feet; the upper smaller ice box is of a double wood filled in with charcoal and lined with zinc; the ice house in the cellar is of double wood and filled in with saw dust.

Q. 33. Would you please make a drawing of this apparatus put in your saloon by Mr. Neuhart, which you used for the purpose of drawing beer?

A. I will.

(The witness here makes a drawing which is marked "Defendant's Exhibit Meinhard, A," C. D. K., Notary Public.)

Q. 34. Please describe your drawing, Meinhard, "Ex. A"?

A. The letter "a" shows the barrels in the ice house in the cellar; they contain the beer; letter "b" shows the hose which is tied to the beer pipes and connected with faucets "i" to tap those kegs or barrels "a" letter "c" shows the pipes connected with the hose "b" and faucets "e" with bar room running from hose "b" to the upper ice box and fastened to the faucets "e"; letter "d" is the tin pipes in the bottom of the upper ice box, surrounding the beer pipes "c"; letter "e" is the faucets in the upper ice box; "f" shows the upper ice box, and "g" the ice house in the cellar; "h" shows the India rubber hose surrounding part of pipe "e" and fastened to tin pipes "d"; "i" shows the faucets to tap the barrels in the ice house.

Q. 35. How did you force the beer out of kegs "a" into the bar room upstairs?

A By an air pump, worked by water power.

Q. 36. Who placed the air pump there?

A. The first one was put in by Mr. Neuhart; it was afterwards changed, and one put in by Mr. Joe Wolf.

Q. 37. During the recess we are about taking, will you please make another drawing of this apparatus which may be more satisfactory to yourself ?

A. I will.

Adjourned to 2 p. m.

Parties appeared as before and witness continued :

Q. 38. Do you desire to make another draft of this apparatus?

A. I finished up the old one with ink, and this may be just as good.

Q. 39. Does this drawing fairly represent the apparatus used in your saloon ?

A. As near as I could make a drawing of it.

Q. 40. I see on the drawing, Meinhard Exhibit "A," that you make the faucets "e" appear as if one was above the other; how is it, were they that way or were they side by side ?

A. They were side by side on the same level.

Q. 41. And how was it with reference to the pipes described in the apparatus ?

A. They entered into the upper ice box on the same level, but outside of this they were like a bundle together.

Q. 42. How was the pipe "d" fastened into the upper ice box ?

A. They were soldered.

Q. 43. Was there any way for the water to pass out of the upper ice box into the lower ice box, except through the pipe "d" and hose "h" ?

A. There is not.

Q. 44. How much of this apparatus described on "Meinhard Exhibit A," did Mr. Neuhart construct ?

A. He constructed all except hose "h," which I put on myself.

Q. 45. Then the pipe "d" put in by Mr. Neuhart did not run into the lower ice-box ?

A. No, sir; it did not.

Q. 46. Then when was it that you fastened this rubber hose "h" to the pipe "d" ?

A. I think it was in the latter part of the summer of 1877.

Q. 47. Did the pipe "d" run into the hose "h," and if so, how far ?

A. It runs in about two inches.

Q. 48. How was it fastened ?

A. It was drawn over the tin pipe and it was so hard to put it on , that when on it did not come off.

Q. 49. Did you use any wire in fastening them together ?

A. I did not.

Q. 50. Was it necessary in order to make them fit tight ?

A. It was not.

Q. 51. What effect, if any, did the use of this apparatus have on the beer ?

A. It kept the beer cool.

Q. 52. Did you continue to use this apparatus from the time you put it in in the fall of 1877, for about the term of four years ?

A. I think we used it up to last winter.

Q. 53. Did the use of this apparatus described in "Meinhard Exhibit A" answer the purpose which it was constructed, and did it give entire satisfaction ?

A. It did, sir.

On cross-examination he testified as follows:

By Mr. Selden :

X Q. 54. What was your occupation previous to 1876 ?

A. I used to be in the wine import business in New York City.

X Q. 55. How long have you resided in Rochester ?

A. Since 1876.

X Q. 56. Are you a native of this country ?

A. No, sir; I am born in Germany.

X Q. 57. How did you draw your beer previous to the time you say the Neuharts put in this device for you ?

A. I drew it directly from the keg.

X Q. 58. Where is your saloon located?

A. At 75 North St. Paul street, Rochester, N. Y.

X Q. 59. Do you still occupy the same premises?

A. Yes, sir.

X Q. 60. What apparatus have you been using for drawing beer since you have taken this device out?

A. I tapped the kegs directly as before.

X Q. 61. Does this apparatus that the Neuharts put in for you still remain in your saloon?

A. Yes, sir.

X Q. 62. The whole of it?

A. Not exactly the whole thing.

X. Q. 63. How much of it remains?

A. We had put in after the first apparatus was not quite satisfactory. Mr. Neuhart had put in coils in connection with the beer pipes, and those have been taken out afterwards, and we have put in straight pipes again.

X Q. 64. When was it that Mr. Neuhart had put in these coils?

A. This was done in the summer of 1877.

X Q. 65. How long after the apparatus was put in were the coils put in?

A. I can't say this; it may be a few weeks afterwards; may be a few months afterwards; I don't recollect now.

Q. 66. Where were these coils placed—in the upper ice box?

A. Yes, sir.

X Q. 67. How many turns of the pipe were there in each coil?

A. I think about five or six.

X Q. 68. How far across were the coils—what was the diameter?

A. They were about six inches wide and about ten inches long.

X Q. 69. Did these coils rest on the bottom of the upper ice box?

A. Yes, sir.

X Q. 70. How were these coils connected with the supply pipes and faucets?

A. They were fastened by brass couplings on each end.

X Q. 71. Of what materials were the coils?

A. They were lead pipes.

X Q. 72. The coils were simply a straight pipe bent?

A. Yes, sir.

X Q. 73. How were the supply pipes connected with the faucets before you used the coils?

A. They were connected the same way with couplings.

X Q. 74. Were they bent down from the top of the tin tubes as represented in the drawing?

A. Yes, sir; they were bent down to the bottom of the ice box.

X Q. 75. Where was your upper ice box located with reference to your bar?

A. It was located behind the bar.

X Q. 76. I suppose these coils were covered by water most of the time?

A. With ice and water.

X Q. 77. Did you wrap up the coils with anything—with cloth?

A. They were not.

X Q. 78. Did the coils work better than the bent pipe?

A. They kept the beer better—cool; but could not be so well cleaned; therefore we took them out again.

X Q. 79. How long did you use the coils?

A. Don't know exactly how long, but only a short time.

X Q. 80. For two weeks or two months?

A. I can't say.

X Q. 81. What has become of the coils?

A. I got them yet.

X. Q. 82. You haven't used them since you have taken them out?

A. I have not.

X Q. 83. How long are those rubber tubes?

A. About three feet, I should say—the rubber hose "h."

X Q. 84. What was the diameter of the rubber hose?

A. I guess it must be about one inch inside; they are about the same inside as the tin pipes outside.

X Q. 85. What has become of that hose?

A. There are some of them there; sometimes we had to change them, take off the old and put on the new.

X Q. 86. How often did you have to change the rubber hose?

A. Not very often—only when they were in too bad condition—too dirty—we would have to take them out and wash them or put in new.

X Q. 87. How often did yom have to wash them?

A. I should think about twice a year.

X Q. 88. Did these rubber pipes enter the lower ice house in the same hole?

A. Yes, sir.

X Q. 89. How large was the hole?

A. I think it was about six inches wide.

X Q. 90. How long?

A. It was about the same length.

The above is taken from Mr. Meinbard's testimony given in 1882, and agrees in every particular with his testimony given in these cases, with the single exception that on this trial, having found Mr. Cassabeer's bill, and examining Mr. Cassabeer's book, he found that he did not remove the coils from the upper ice box until September, 1878, having allowed them to remain there a little longer than he supposed; and complainant's present counsel, seeing that Mr. Meinhard's testimony given in 1882, and again in these cases, was corroborated by Mr. Cassabeer's bill and book when found, tries to show that the entry on Mr. Cassabeer's books of September 7th, 1878, was tampered with in some mysterious way, which he could not discover except in his imagination, and reasoned from that fact that if these coils were ever taken out they were taken out in 1879, because Mr. Cassabeer did some work for Mr. Meinhard that year. Counsel might with the same propriety have argued that they were taken out in any subsequent year, because Mr. Cassabeer has been doing more or less work for Mr. Meinhard every year for the last ten years.

But your Honor will see in reading Mr. Cassabeer's testimony

given in this case, before he found Mr. Meinhard's account or bill that he stated that if he could find the entry on his books, that it would show that he used some solder on this job, as he well recollected having done so, and true enough, when the bill and book is found, we found under date September 7th, 1878, a charge for two pounds of solder, but no solder is charged in the bill for 1879.

I was surprised that complainant's counsel did not claim that these bills were also manufactured for the occasion, and I do not know but he implies as much in his brief in explaining the alleged mysterious manner in which the book was found and produced, even going so far as to charge by implicatiou that defendant's counsel was a party to this alleged scheme. In fact, complainant's counsel does not seem to have stopped at anything in order to cast suspicion on defendant's side of this case. That being in my opinion a part of the plan or scheme decided on by complainant's counsel before commencing these actions, and he has acted his part, such as it is, in that direction, with consistency and peculiar ability.

It will also be noted from the above extracts taken from Mr. Meinhard's testimony, given in 1882, that he then stated that his apparatus, as described by him, complete and in working order, was then in his saloon and could be seen by complainant or his counsel if they so desired Is that not sufficient to satisfy your Honor that Mr. Meinhard's apparatus was there, as he described it, and could then be seen by complainant or his cousel, if they so desired, which might have avoided this protracted and expensive litigation?

On page 10 of complainant's brief, he states "that the coils were "removed from the upper ice box shortly after being put in, by whom "does not appear, and it was after this that the claimed addition was "made by Meinhard."

The testimony of Mr. Cassabeer and Mr. Meinhard, the only witnesses on that question, is, that the coils were taken out by Mr. Cassabeer, September 7th, 1878, and at that time the rubber hose surrounded the supply pipes ; and Mr. Meinhard testifies that he put

on the rubber hose in 1877, and within two or three weeks after Mr. Neuhart put up his apparatus, which was in July, 1877.

I quote from Cassabeer's testimony, defendant's record, pages 257 to 285:

By Mr. Bennett:

X Q. 606. Then neither you nor Mr. Meinhard could tell what work that payment of eleven dollars covered?

A. I know because I know what work I done. It was for taking them coolers off.

X Q. 607. There was something to show it?

A. No, sir; I didn't have the bill to show it, but the amount was there and I know it was done.

X Q. 608. What work did you do for Meinhard on Mortimer street?

A. Put up some sinks and repaired pipes.

X Q. 609. At his place there?

A. At his place there. That was the Real School, and there were some charges there for Falls Field, and it was all in one bill and eleven dollars, and it may have been separated so as to keep the Mortimer street separate.

X Q. 610. You don't know that, do you?

A. No, sir.

X Q. 611. All that you saw at Mr. Meinhard's was that he paid you eleven dollars on the 29th of October, 1878?

A. Yes, sir.

X Q. 612. You don't know what it was for?

A. Yes, sir; I know it was for coolers, and that was done at the same time.

X Q. 613. Then it was for both?

A. Yes, sir; for repairs in general at different places.

X Q. 614. It was for everything he owed you up to that time?

A. Yes, sir.

X Q. 615. Now are we to understand that you never did a

job of any kind for Mr. Meinhard prior to the work included in this payment of eleven dollars?

A. Yes, sir.

X Q. 616. So that the first work you ever did for Mr. Meinhard must have been a short time prior to the 29th of October, 1878.

A. Yes, sir.

X Q. 617? And this you stick to?

A. Yes, sir.

X Q. 618. Notwithstanding what you may have testified to yesterday?

A. Yes, sir. * * * *

X Q. 752. Let me ask you to turn to page 20 of this book, to the account of Messrs. Gilbert & Meinhard, for $11.13, and explain that?

(Book again shown witness.)

A. Well, that was done at the time the coolers were taken ont That was in with it.

X Q. 753. You had overlooked that account, hadn't you?

A. Yes, sir.

Complainant's counsel requested the notary to make a transcript of the account of Gilbert & Meinhard on page 20, and such transcript is here offered in evidence and marked "Complainant's Exhibit, Cassabeer Account with Gilbert & Meinhard."

X Q. 754. You said, didn't you, that the removal of the coils was included in this account on page 20?

A. Yes, sir, it was in that,

X Q. 755. You swear positively to that, do you?

A. Yes, sir.

X Q. 756. Then of course these entries on page 20 are for work done in 1878?

A. Yes, sir.

X Q. 757. And that you swear positively to?

A. Yes, sir.

X Q. 758. I read from this account, page 20, first item: "Thursday, May 16th, 8 three-eighths fittings, 64 cents; three nipples, 25 cents; 21 feet three-eighths pipe, $1.05; three-fourths day time, gas-fitters, fixing pipe, $3.37." Don't you find that that is the first work that you did for Meinhard & Gilbert, as shown by this account?

A. Yes, sir.

X Q. 759. Have those entries anything to do with the removal of the coils?

A. Yes, sir; the following entries after that.

X Q. 760. Have those entries anything to do with the removal of the coils?

A. Not what you read off just now.

X Q. 761. Then the fact is, you did some work for Gilbert & Meinhard before you removed these coils, didn't you?

A. Yes, sir.

X Q. 762. Now, didn't you tell us repeatedly that the first work you ever did for Gilbert & Meinhard was the removal of these coils?

A. Yes, sir, and some other work besides.

X Q. 763. How do you harmonize the fact that your books convict you of that misstatement that, in that it shows that the first work which you did for Gilbert & Meinhard was not in the removal of the coils?

A. Because I thought that was the first work.

X Q. 764. And now you are positive it wasn't, aren't you?

A. Yes, sir.

* * * * * * * *

X Q. 823. And what was the two pounds of solder and hooks?

A. The solder was for the upper ice box and the basin cock.

X Q. 824. And wasn't that solder for the job of September the 6th, the day preceding?

A. No, sir.

X Q. 825. And what were those hooks for?

A. For hooking some pipes up in the hall, I suppose.

X Q. 826. Don't you know what they were for?

A. For hooking up pipes, common iron hooks.

X Q. 827. For hooking up common iron pipe?

A. Yes, sir.

X Q. 828. Gas pipe?

A. Yes, sir.

X Q. 829. And where did you put these hooks?

A. They must have been put in the hall.

X Q. 830. This cock you put in, did you?

A. Yes, sir.

X Q. 831. On September the 7th?

A. Yes, sir.

X Q. 832. And what was it for, did you say?

A. For the wash-basin.

X Q. 833. Did you take out the old one?

A. Yes, sir.

X Q. 834. And fitted things up generally, and placed this new one in?

A. Yes, sir.

X Q. 835. Where was this wash-basin that you put the new cock to?

A. In the saloon part.

X Q. 836. In the saloon proper, or in the garden?

A. Yes, sir, in the saloon, in the front part of the building.

X Q. 837. And did you at that time fix up the basin, and do whatever was necessary in connection with this wash-basin?

A. Yes, sir.

X Q. 838. And wasn't the item "time, plumber and helper fixing pipe" for putting in the cock and the hooks and doing what soldering was necessary?

A. The upper ice-box and that was altogether.

X Q. 839. What do you mean, the upper ice-box?

A. The work on the coolers.

X Q. 840. The work on the coolers, you distinctly remember, was included in that item.

A. Yes, sir, and that soldering.

X Q. 841. You swear positively, do you, that the taking out of the coils, and the solder used for soldering the connection, were included in this item September 7th, "time, plumber and helper fixing pipe, $1.25"?

A. Yes, sir.

X Q. 842. Do you remember having testified that you had no helper with you when you took out those coils?

A. Yes, sir.

X Q. 843. Then this item couldn't have been for that, could it?

A. Why not?

X Q. 844. Doesn't this item say, "time, plumber and helper fixing pipe"?

A. He may have come there to help on the basin cock.

X Q. 845. Didn't you tell me you didn't have a helper with you at that time?

A. Yes, sir, I did.

X Q. 846. Now if that is true, then this item does not refer to taking out of those coils, does it?

A. Yes, sir, it does.

X Q. 847. Why does it?

A. Because I know it was done at that time.

* * * * * * * *

X Q. 868. Now if the removal of these coils is not included in that account on page 20, then you didn't remove these coils, did you, until after September, 1879?

A. If it is not, but it is on that account.

X Q. 869. If it is not there, then is it not a fact that you didn't remove those coils until after September, 1879?

A. Do you mean to say if it is not on page 20?

X Q. 870. Yes.

A. Well, it was done in 1878, on September 7th, on page 20.

X Q. 871. You distinctly remember it was done on that day, do you?

A. Yes, sir.

X Q. 872. It is now recalled very distinctly to your recollection, is it?

A. Yes, sir, according to the soldering and material used there. I know what soldering was used and what the job was.

By Mr. Sullivan, counsel for the defendant:

R D. Q. 907. Do you find the account of Gilbert & Meinhard on page 20, indexed under the name Gilbert & Meinhard, or any other name ?

A. I can tell by looking on the book. (Witness shown book.) Yes, sir.

R D Q. 908. Did you look for the name of Gilbert & Meinhard last night while searching for the account of Mr. Meinhard?

A. No, sir.

R D. Q. 909. Is that the reason why you didn't find the account of Gilbert & Meinhard in this book?

A. Yes, sir.

R D Q. 910. For what name did you look last night, in your book ?

A. Mr. Meinhard.

R D Q. 911. What time did you reach home last night ?

A. About a quarter to eight.

R D. Q. 912. And did you examine this book before or after supper ?

A. After supper.

R D Q. 913. Did I call at your house last night, shortly after you examined this book?

A. Yes, sir.

R D. Q. 914. About what hour was it?

Q. It must have been in the neighborhood of nine o'clock.

R D. Q. 915. Did I say to you where I was going?

Q. Yes, sir.

R D Q. 916. Where to?

Q. Down Clinton street.

R D. Q. 917. Did I tell you why I went down Clinton street?

Objected to as immaterial, as the fact appears that Mr. Sullivan did go to the witness' house and inquired in reference to this book after encouraging the witness not to deliver the book last night into the hands of the notary.

A. On some business, I believe

R D Q. 918. And did I look over this book with you last night at your house?

A. Over Meinhard's account.

R D Q. 919. And after examining the account with you, what did I say to you about going to see Mr. Meinhard?

A. To see when the first account was paid.

R D Q. 920. And did you go to Mr. Meinhard's pursuant to my request?

A. Yes. sir.

R D Q. 921. Did I go with you?

A. No, sir.

R D Q. 922. And at your request did Mr. Meinhard look up his books and papers in reference to this matter?

A. Yes, sir.

R D Q. 923. And did he then and there find a book in which there appeared an entry in reference to this work which you did for him?

Objected to as leading, and as already having been answered by the witness.

A. Yes, sir.

R D Q. 924. And did I also say to you that I would call at Mr. Meinhard's on the way back?

A. Thought you would stop in.

R D Q. 925. And I done so, did I not?

A. Yes, sir.

R D Q. 926. And met you and Mr. Meinhard?

A. Yes, sir.

R D Q. 927. In Mr. Meinhard's saloon?

A. Yes, sir.

R D Q. 928. And then did Mr. Meinhard show me the same book that he had shown you?

A. Yes, sir.

R D Q. 929. And what did I do with that book?

A. You took it along with you.

R D Q. 930. How long did I remain in Mr. Meinhard's?

A. About ten minutss.

R D Q. 931. And did we have anything to drink there?

A. Yes, sir.

R D Q. 932. What did we have to drink?

Objected to, as it is hardly possible that the Court desires to know what they drank.

A. We each had a glass of wine.

R D Q. 933. Mr. Meinhard keeps a saloon, does he not?

A. Yes, sir.

R D Q. 934. And what did I say, if anything, to Mr. Meinhard about coming up here to-day?

A. You said you may require him?

R D Q. 935. And did Mr. Meinhard give any reasons why he didn't come up yesterday?

A. On account of his teeth.

R X Q. 958. You didn't see Mr. Meinhard in bed, did you?

A. No, sir.

R X Q. 959. You didn't see that he was in any way physically affected, did you?

A. No, sir.

R X Q. 960. He didn't appear to be sick?

A. Only his teeth, and swollen in the face.

R X Q. 961. Had a slight toothache?

A. Swollen face.

Since defendants' counsel has pursued the extraordinary course of attempting to account for Mr. Meinhard's absence yesterday for cross-examination, he proposes to show by a letter sent to complainant's counsel, Mr. SELDEN, by defendants' counsel, Mr. SULLIVAN, that Mr. Meinhard caused a note to be written by his son to the effect that he could not attend for cross-examination, as, quoting the language of the note: "Father cannot call to-day, sick abed; will call to-morrow, if possible.

CHAS. MEINHARD.

And complainant's counsel spreads this of record for the further fact that it will give the Court the opportunity of judging as to the character of the witness Meinhard for truth and veracity.

This is what complainant's counsel calls impeaching the witnes

Meinhard; but it is the best he could do, as Mr. Meinhard is one of our most respected citizens. Mr. Bartholomay, complainant's witness, who was called to impeach Mr. Meinhard, says of him: "I always took Mr. Meinhard for an honest man and just as honest as I would expect a man to be." This coming from a witness who was called to impeach Mr. Meinhard is a pretty good certificate of character, if one was necessary.

In complainant's brief on page 11 counsel states that Mr. Meinhard testified, that the outside pipe ran into the upper ice-box about four inches. That is so, the witness meaning the tin pipe, of course, while the counsel would have it appear he meant the rubber pipe; but as usual the witness is correct while the counsel is not.

On page 12 complainant's counsel expresses his surprise that Mr. Wolfe was not called as a witness. The answer to that is that Mr. Wolfe is dead. And moreover he did not put in the Meinhard apparatus, but put in the air pump only. And again on the same page asks why defendants have not called to the stand Felix Guenther, Otto Schantz and Fred Guthacher, who at one time worked for Mr. Meinhard. The answer to that is, that Otto Schantz is their man; Felix Guenther is in Germany, and Fred Guthacher's whereabouts is unknown.

Complainant's counsel also asks "with same connection" why these additional witnesses called in behalf of defendants in these cases were not examined in the former cases. The answer to all that is, that the apparatus was in Mr. Meinhard's saloon at the time and could be seen by any one, and there was no question then made as to the existence of this apparatus as described by Mr. Meinhard which he used in the same saloon since 1877. In fact it was admitted by complainant's counsel, or at least it was not denied.

Pages 13 to 26 inclusive of complainant's brief are given up to a review of complainant's ex-parte affidavits used on a motion for

rehearing in the former suits, and which are incompetent and not in evidence in this case ; and to some comments on defendant's affidavits used in the former suits, which are in evidence, and the only point worthy of notice there discussed is as to whether or not Meinhard's saloon was closed on Sundays; the testimony being that the saloon was practically closed on Sundays, there possibly being a little business done in it in the forenoon, the principal Sunday business being done in the Concert hall in the rear of the saloon, which was reached without passing through the saloon.

On pages 27 and 28 complainant's counsel analyzes the grammatical construction of Mr. Meinhard's testimony. Your Honor will remember in reading this testimony that all of defendant's witnesses are Germans and not as familiar with English grammar or its construction as complainant's counsel is presumed to be.

On page 29 he expresses his surprise that Mr. Meinhard when he gave his testimony in these former suits in 1882 did not tender an inspection of this apparatus which might remove the doubt surrounding its existence. The answer to that is Mr. Meinhard at that time testified that it was there and could be seen and no one denied its existence; if complainant had any doubt about it he could have visited Mr. Meinhard's saloon and inspected it.

On pages 30 and 31 some comments are made on Mr. Gilbert's affidavit which are not deserving of any notice.

On pages 32 and 33 complainant's counsel comments on the contents of Mr. Cassabeer's book and the mysterious finding of the bill, which seems to have caused complainant's counsel so much offense and surprise; and he takes revenge by resorting to calling harsh names, and intimates that defendant's counsel was a party to this alleged conspiracy and mysterious production of these documents, which charges I will allow your Honor to consider from the testimony in the case and without any comments from me, except to say that I was only too glad to find the books containing these entries and assisted Mr. Cassabeer and Mr. Meinhard that night in looking for them; but

did not find that evening the account in the book Mr. Cassabeer wanted, because through an oversight we only looked in the Index for "Meinhard," when the account was indexed "Gilbert & Meinhard," and true enough when the account was found it contained the very entry that Mr. Cassabeer claimed it would show, if found, to-wit: the solder used when the coils were removed, September 7th, 1878.

And further commenting on Mr. Meinhard's testimony, says that Mr. Meinhard is unworthy of belief because in answer to some question he stated something about a person not being obliged to tell all the truth about his business. What he meant by that of course was that a person was not obliged to tell every inquisitive person all about his business or the secrets of his business. The word "truth" in his answer is not to be taken in its literal sense as it was not so intended, as your Honor will readily infer on reading that part of his testimony which contains that question and answer, and these German witnesses may not be so fortunate in the selection of words to express themselves in English as complainant's counsel; but it is by selecting a disconnected question and answer in this way and building a false argument on it that complainant's counsel expects to succeed in this case and justify his charge of calling defendant's witnesses "liars and perjurers."

Pages 33 to 58 inclusive is given up to theorizing on Mr. Meinhard's testimony, and knowing that your Honor will read the whole of Mr. Meinhard's testimony, as he is one of defendant's principal witnesses I will not make any comments on complainant's fine spun theory, except to again remind your Honor that the rubber hose was put on in the summer of 1877 and that the coils were removed from the upper ice-box by Mr. Cassabeer in September, 1878. When or by whom the coils were removed is of no special consequence one way or the other, as the coils in the upper ice-box did not constitute the invention, neither were they any part of the invention covered in the Gordon patent, but the fact is only material as showing when Mr. Cassabeer removed them in September, 1878. He then saw the tin pipes and the rubber hose surrounding the supply pipes as described by Mr. Meinhard.

Your Honor will recollect that Mr. Meinhard, in his testimony given in 1882, was of the opinion that he took the coils out in the latter part of 1877, and so testified again on his direct examination in this case; but upon finding Mr. Cassabeer's bill and the entry in Mr. Cassabeer's book, he finds that the coils were taken out in 1878, having allowed them to remain there a little longer than he supposed; but that in no way affects the facts established by the testimony that the rubber hose was put on in 1877, and was on when Mr. Cassabeer removed the coils in 1878, as Mr. Meinhard very truly stated in his testimony that it was impossible for him to tell in 1882 which particular change he made first; whether the coils were taken out before or after he put the rubber hose on, but he knows he put the rubber hose on a few weeks after Mr. Neuhart put the apparatus in, in the summer of 1877, as shown by Neuhart's bill on page 367 of defendant's record, and Cassabeer's bill on page 368 of defendant's record, shows that the coils were taken out September 7th, 1878, and so established by the testimany of the two men who did the work, Mr. Meinhard and Mr. Cassabeer; and no theorizing or philosophizing of complainant's counsel will disprove those facts as established by this testimony and documentary evidence.

I notice in complainant's brief on page 50, that he purports to give a copy of the bill, which is not a correct copy. A correct copy of the same is to be found on defendant's record, page 368. And your Honor will see that it does contain a charge for solder, as testified to by Mr. Cassabeer, that the book or account would show if produced. I annex the original bill, so that your Honor will see that I have stated the exact facts.

The whole argument of complainant's counsel on that question is based on the most flimsy ground, and hair-splitting argument on minor matters, such as whether these coolers were fastened by both ends being coupled or only one end, as if such matters were of any consequence one way or the other, for in any event the disconnected ends of the pipe would have to be soldered, as testified to by Mr. Cassabeer, and he used the solder for that purpose, which was charged in that bill September 7th, 1878.

And in the same connection complainant's counsel, on pages 58 to 73, tries to show that even if Meinhard put on this rubber hose, as he testified to, then, according to his theory, it was not long enough to reach the lower ice box. The testimony of all the witnesses who testified to seeing it was that it was long enough, which testimony is more conclusive than the theorizing of complainant's counsel. And again he says even if the hose was long enough, as claimed by Mr. Meinhard, then he claims that it was too small, because it was only three-quarters of an inch inside diameter, while the beer pipes were a half inch; even if that were so that was sufficient space to answer the purpose; but the fact is the beer pipes were only one-fourth or three-eighths.

Pages 73 to 81 is given up to claiming that Meinhard's saloon was not closed on Sunday. I have already answered that claim by showing that the saloon was closed for all practical purposes, as all the Sunday business was done in the Concert Hall, but possibly in the morning a few regular customers would come in the saloon through the side door, which fact has nothing to do with the merits of this case, except that it goes to show that complainant's newly discovered witnesses had no opportunity or occasion to examine this apparatus in the saloon, as they were employed to wait on customers in the concert hall.

Pages 82 to 86 is given up to analyzing the testimony of Albert Stief, one of defendant's witnesses and "his chapter of mistakes," as claimed by complainant's counsel. Your Honor will notice in reading Mr. Stief's testimony that "this chapter of mistakes" consists in some slight discrepancies between his affidavit used on a motion for rehearing in the former cases and his testimony in this case, for instance, as to whether the "tin pipes extended four inches above and four or five inches below the bottom of the upper ice box," or whether "they extended four inches above and eight inches below;" and finally concludes his analysis of Albert Stief's testimony in these words, "What 'need is there of continuing the discussion as to Stief when he appears 'as a self-confessed perjurer, having deliberately sworn in his affida-

"vit that the bar where this apparatus was used was closed on Sun-"days, and only the beer garden was kept open."

Pages 87 to 96 is given up to an analysis of Mr. Barr's testimony, who was called by defendants to show the fact that he made certain repairs in the lower ice box and saw the tin pipes in the upper ice box, he not being able to recall the fact of having seen the rubber hose over the supply pipes; but on his cross-examination he undertook to fix dates and recall the construction of this apparrtus and got some portions of it confounded with other apparatus which he constructed, and was not certain whether he done this work in 1877, 1878 or 1879, and had no means of refreshing his recollection as to this work he done about ten years ago; and defendant's counsel rushes at the conclusion that he done this work in 1879; having testified that he saw the coils in the upper ice box at the time, and therefore complainant's counsel argues that if Mr. Barr is to be believed the coils were not taken out in 1878, as stated by Mr. Cassabeer.

Pages 96 to 118 inclusive are given up to an analysis of Mr. Cassabeer's testimony, complainant's counsel arriving at the conclusion that he also is a "perjurer and co-conspirator," claiming that he, Cassabeer, appears in even a worse light than Albert Stief or Barr, concluding by saying, "I leave him in the company I found him, a fit companion for Meinhard, &c.;" but as I know your Honor will read the whole of Cassabeer's testimony, as he is one of defendant's principal witnesses, I will not make any comments on the analysis, except to say that notwithstanding the reckless charges made by complainant's counsel against Mr. Cassabeer that I think a reading of his testimony will satisfy your Honor that he is a truthful, candid witness, and that if complainant's counsel was open to conviction that Mr. Cassabeer's testimony must have satisfied him that he took the coils out in 1878, and that at that time these rubber hose and tin pipes surrounded the supply pipes in the Meinhard apparatus.

The next witness taken up is Mr. Schaub and his testimony is analyzed on pages 118 to 133 of complainant's brief in which com-

plainant's counsel arrives at the conclusion that "in many respects Schaub may be said to be the worst in the lot." The defendant's witnesses seem to be growing worse in the mind of complainant's counsel as fast as he kills them off in his mind with a sweep of his pen. And instead of burdening your Honor with any comments upon it, I will ask your Honor to read the whole of Mr. Schaub's testimony in defendant's record on pages 286 to 332, as Mr. Schaub is another of defendant's principal witnesses.

Complainant's counsel says that "Mr. Schaub utters a falsehood" when he says that when examined in the Welker case he testified about the Meinhard apparatus, because instead of testifying he made an affidavit, which is to be found on page 339 of defendant's record, tn which he describes the Meinhard apparatus as seen by him in 1878. The witness of course thinking that by giving this affidavit he was testifying in the case, while counsel claiming that the affidavit was not testifying ; and on that fine distinction builds up an elaborate argument, arriving at the conclusion that Mr. Schaub also was a "falsifier and perjurer."

And in like manner finds fault with Mr. Schaub because he did not understand the difference between being personally served with a subpoena and being requested to attend by defendant's counsel.

On pages 135 to 137 inclusive further comment is made on Mr. Schaub's testimony, and as to the substance of a conversation he had with Mr. Gordon on page 12 of my original brief in this case, I alluded to that charge as follows :

"Complainant having utter failed to discredit Mr. Meinhard, also undertook to discredit Mr. Schaub by calling Mr. Magin, the complainant, and Gordon, the patentee, who testified in substance that in conversation with Mr. Schaub in 1883, and while the former suits were pending, Schaub made certain statements to them which, if true, would tend to discredit him. The alleged statements are so highly improbable that they are deserving of little or no consideration. And the fact that Mr. Magin and Mr. Gordon never mentioned these al-

leged statements of Mr. Schaub until they mentioned them to Mr. Bennett during the taking of the testimony in these cases, notwithstanding they had been examined in the former suits after these alleged conversations, as well as having made affidavits for a rehearing in said former suits, is a another very strange circumstance going to show that these alleged statements of Schaub was an afterthought and a very unwise act on the part of complainant in his desperation to succeed in these suits by any means, fair or otherwise. (Complainant's Record, p. 375; Gordon X. Q. 42–45; Magin, p. 396, X. Q. 31–40; Magin, p. 402, X. Q. 63–64.)

And I do not deem it necessary to say anything further in this connection except to quote a little of Mr. Gordon's and Mr. Magin's testimony on that point.

I quote from Mr. Gordon's testimony, Complainant's record, page 374.

By Mr. Sullivan:

X Q. 46. And all these conversations with Mr. Schaub were had before yourself and Mr. Magin were examined as witnesses in that case, were they not?

A. Yes, sir; before I was, anyway.

X Q. 48. Did you testify on that occasion that Mr. Schaub told you that you made a mistake in bringing suit against the Rochester saloon keepers?

A. I don't think I did.

X Q. 49. Did you testify on that occasion that Mr. Schaub said to you that if you would make some arrangements with him in reference to this patent that he wouldn't sign his testimony?

A. I don't think I did.

X Q. 50. Or anything to that effect?

A. No, sir.

X Q. 51. Did you tell Mr. Selden, complainant's counsel, about these conversations that you had with Mr. Schaub?

A. I don't think I did.

I quote from Mr. Magin's testimony in Complainant's record, pages 396 and 402.

By Mr. Sullivan:

X Q. 26. This conversation you have stated that you had with Mr. Meinhard in your saloon was while the testimony of the suit of Michael against McKay and Welker was being taken in this city, was it not?

A. It was before there was any testimony taken.

X Q. 27. But after the suits had been commenced?

A. Yes, sir.

X Q. 28. Shortly after you commenced the suits against McKay and Welker it became pretty generally known by the saloon keepers of Rochester, did it not?

A. Yes, sir.

X Q. 30. You were examined as a witness in those cases, were you?

A. Yes, sir, I think I was. Do you mean to prove the infringement?

X Q. 31. You may answer my questions, please, and nothing more.

A. Yss, sir.

X Q. 32. And that was after you had this alleged conversation with Mr. Meinhard?

A. Yes, sir.

X Q. 33. Did you refer to that conversation in your testimony?

A. I did not.

X Q. 34. You were present while the testimony of Mr. Meinhard was being taken in those cases, were you not?

A. I was.

X Q. 35. Upon his cross-examination, do you recollect of your counsel asking him about his visit to your saloon?

A. I think I do.

X Q. 36. And you heard him give his testimony on that subject, did you not?

A. I did.

X Q. 37. And when you were examined you didn't deny the truthfulness of that testimony, did you?

A. Of the Meinhard testimony?

X Q. 38. Of the Meinhard testimony so far as that conversation in reference to the saloon was concerned?

A. I was not asked.

X Q. 39. I asked you if you denied it while giving your testimony?

A. I did not.

X Q. 40. You also made one or more affidavits in the same case on your motion for a re-hearing, did you not?

A. I did.

X Q. 41. Did you in either of those affidavits refer to that conversation you had with Mr. Meinhard in your saloon?

A. I don't think I did.

* * * * *

X Q. 63. This alleged conversation which you say you had with Mr. Schaub, was also had before you made the affidavits in the same case?

A. Yes, sir.

X Q. 64. Did you refer in those affidavits to that conversasation had with Mr. Schaub?

A. I think I did not.

From the above testimony of complainants themselves I think your Honor will agree with me when I say that no such conversation was ever had between complainant and Mr. Schaub, as testified to by complainant.

This closes my reply to the criticisms made in complainant's brief on defendant's witnesses, and I feel that I have shown that the defendant s witnesses are not the "liars and perjurers" that complainant's counsel characterizes them in his brief.

Pages 142 to 162 of complainant's brief are taken up with a review of the testimony of complainant's witnesses, Otto Schantz, Raymond Stief, Otto Hahn, Geirge J. Englert and John B. Englert.

And concludes by saying that it would be—

"Remarkable that five men could be found who would, without

the slightest motive, swear falsely as to this Meinhard apparatus. It cannot be denied that they must have had considerable knowledge of the apparatus for it is conceded that they describe it correctly, with the exception of the rubber hose around the beer supply pipes, which they swear in the most positive manner were never there."

"Surely we do present a preponderence of evidence as to the non-existence of the Meinhard apparatus with rubber hose around the beer supply pipes, and of such a character that by no process of reasoning can it be said that the defendants have established its existence beyond a reasonable doubt."

This is the statement of complainant's counsel on page 142 of his brief ; but counsel seems to have forgotten that the witness Hahn, in attempting to describe this apparatus, states among other inaccurate things, as follows :—

By Mr. Sullivan :

X. Q. 300. What was the size of the hole in the lower ice box through which these beer supply pipes ran?

A. I should judge they were about an inch or half an inch, or three-quarters of an inch.

X. Q. 301. Each hole ?

A. Yes, around in a circle.

X. Q. 302. There was a separate hole for each supply pipe, was there not ?

A. Yes, sir.

X. Q. 303. How far apart were these holes ?

A. They were right together, right close to each other.

X. Q. 312. And what was the size of the hole in the saloon floor through which each beer supply pipe passed ?

A. I don't know.

X. Q. 313. About what size would you say?

A. I couldn't tell you what size they were ; I don't know whether different holes or one hole.

X. Q. 314. You never examined that did you ?

A. No, sir.

X. Q. 315. And you don't know whether the supply in going into the lower ice box, went through different holes or through one hole, do you ?

A. No, sir.

By Mr. Bennett :

R. D. Q. 401. Am I correct in understanding you to have testified that you could not remember whether the beer supply pipes in going into the lower ice box went through separate holes or through one hole ?

A. Yes, sir.

R D. Q. 402. You can't recollect whether they went through one hole or separate holes ?

A. No, sir.

R. D. Q. 403. And is the same true about the pipes passing through the floor, that you can't remember whether they passed separate holes or through one opening in the floor ?

A. Yes, sir.

There is no question but that the supply pipes passed through the same hole in the saloon floor and into the lower ice box, yet this witness testifies that each supply pipe passed through a separate hole in the floor and lower ice box. This is all that could be expected from a young lad who I suppose never saw this apparatus and certainly never examined it ; and who is only trying to repeat what Schantz told him, but forgot his lesson.

I call your Honor's attention to the following portion of Mr. Hahn's cross-examination, as showing the character of the man for truth and veracity :

I quote from Hahn's testimony, complainant's record, page 129 :

By Mr. Sullivan :

X. Q. 124. When did you first hear of this law suit between Mr. Magin and the saloon keepers in Rochester ?

A. When Mr. Schantz came to Chicago.

X. Q. 125. Did he tell you who sent him out there ?

A. No, sir.

X. Q. 126. You are at present living in Chicago?

A. Yes, sir.

X. Q. 127. When did you come from there to Rochester?

A. Sunday evening.

X. Q. 128. Who came with you?

A. I came all alone.

X. Q. 129. Who requested you to come this time?

A. Well there was no one requested me what time to come; I was going to come anyway; I concluded to come down this time.

X. Q. 130. Then no one asked you particularly to come just now?

A. No, sir; they didn't want me to come now.

X. Q. 131. What did they say about your not coming now?

A. They didn't want me to come the time I did come.

X. Q. 132. When did they want you to come?

A. They didn't say very particularly what time they wanted me to come. I didn't know when the case was coming up.

X. Q. 133. Did they pay your expenses here?

A. No, sir.

Complainant's counsel states:

"Defendant's counsel objects to complainant's counsel putting anything on record at this stage of the proceedings, and while the witness is being cross-examined by defendant's counsel.

"Complainant's counsel states that it was distinctly understood at the last session that the complainant had a witness residing in Chicago that they desired to examine, and that as a matter of convenience they had suggested to the witness if he would come here his expenses would be paid and he would be paid for the loss of time, and that the witness is here in pursuance of such arrangement, and it is the intention of complainant's counsel to see that this witness is paid, not only his expenses, but for the time lost in being in attendance here as a witness

"Defendant's counsel especially calls the attention of the Court to the foregoing improper statement of complainant's counsel, and the Court can readily infer the motive of making the same.

"The complainant's counsel states that the motive is to dispense with, if possible, a needless and absurd cross-examination, and that the Court should know the facts, believing that the Court and the bal-

ance of mankind knows it is unreasonable to expect a man to leave his business in Chicago and come to Rochester without being repaid his expenses and compensated for his time."

Your Honor will observe the improper interruption of counsel at cross-question 133, and will understand the motive ; and that is only a specimen of the way this case has been conducted by complainant's counsel. Here the witness testifies that he paid his own expenses from Chicago to Rochester as a witness for complainant, while complainant's counsel states :

"That the Court and the balance of mankind knows it is unreasonable to expect a man to leave his business in Chicago and come to Rochester without being repaid his expenses and compensated for his time."

Which one are we to believe ? Of course the counsel states the truth and the witness deliberately falsified to help out the complainant and his friend, Otto Schantz, even going so far as to swear that he paid his own expenses from Chicago to Rochester, and that he knew all about the Meinhard apparatus, while his testimony conclusively shows that he knew nothing about it except as he was told by Otto Schantz, and this witness and Otto Schantz are complainant's two principal witnesses :

X. Q 134. Then before leaving Chicago your expenses were not paid ?

A. They were not paid in full ; no, sir.

X. Q. 135. When did you arrive in Rochester ?

A. Sunday evening.

X. Q. 136. About what time ?

A. Half-past six.

X. Q. 137. Did you call at Mr. Magin's place of business on your arrival here ?

A. Yes, sir.

X. Q. 138. Did you see Mr. Magin ?

A. Yes, sir.

X. Q. 139. Have you talked with him about this suit ?

A. No, sir.

X Q 140. Didn't say anything about it ?

A. No, sir.

X Q 141. What were you talking about ?

A. Went in and had a glass of beer and that was all ; I just told him I was at home and I would see him the next day.

X Q 142. Did you see him next day ?

A. Yes, sir.

X Q 143. And on that occasion did you have a talk with him him about this suit ?

A. No. sir.

X Q 144. What were you talking about on that occasion ?

A. I saw him and that was all, and asked him what time the trial would come on.

X Q 145. Was that all that was said ?

A. Yes, sir.

X Q 146. When did you next see him after that ?

A. This morning.

X Q 147. Where did you see him this morning ?

A. At his place of business.

X Q 148. Did you have a talk with him about this suit then ?

A. No, sir.

X Q 149. Did you have another glass of beer there to-day ?

A. I believe we did have a glass of beer.

X Q 150. Anybody drink with you ?

A. No, sir.

X Q 151. Mr. Magin drink with you ?

A. No, sir.

X Q 152. Drank alone, did you ?

A. Yes, sir.

X Q 153. When you left Mr. Magin's saloon where did you go ?

A. I came right here.

X Q 154. Alone ?

A. With Mr. Magin.

X Q 155. Did you talk about this suit on your way coming here ?

A. No, sir.

X Q 156. Not a word at all ?

A. No, sir.

X Q 157. Where did you go to ?

A. I came right up here.

X Q 158. Did he tell you where he was going to ?

A. I didn't know where we were going,

This is the witness with his remarkable story your Honor is asked to believe in preference to defendant's witnesses.

In fact, the more one reads of Hahn's testimony, the more convinced he is that this testimony is prepared expressly for the occasion, and like all such spurious testimony, it is easily detected. And complainant's counsel, realizing the character of Hahn's testimony brought out on cross-examination, says of him on page 156 of his brief :

"I hardly think such a thing will justify your Honor in discrediting Hahn."

And the complainant's witness Englert in trying to describe this apparatus says *that the upper ice box was built into the counter, and had a water-tank or work-board along side of it, while it is conceded that this ice box was behind the counter and three feet from it, and had no water-tank or work-board connected with it. And as further showing his want of knowledge of the Meinhard apparatus, I quote a little of his testimony :*

By Mr. Sullivan:

X Q. 45. You never worked in Mr. Meinhard's saloon?

A. No, sir.

X Q. 46. You never examined the upper ice box, did you?

A. No, sir ; I had no business to.

X Q. 47. You don't know how that was constructed?

A. I do, about. I can just about tell how it was. It is the same as all the rest have, with the faucets on the front.

X Q. 48. You can tell by looking on the outside of it?

A. Yes, sir, that is about all.

X Q. 49. You never examined the inside of it?

A. No, sir.

X Q. 50. So what was inside of the upper ice-box you don't know?

A. No, sir.

X Q. 53. Was it placed under the bar?

A. Right under the counter.

X Q. 54. Right next to the work-board, was it?

A. Yes, sir, there was three or four faucets on there.

X Q. 55. Three or four faucets fronting it?

A. Yes, sir.

X Q. 62. Was the ice box built right into the counter?

A. Right under the top board.

X Q. 63. The top of the ice box was on a level with the bar?

A. Yes, sir.

X Q. 64. And it formed part of the bar counter, did it?

A. I think there was a piece cut out to form this box. I think there was a piece cut out to get ice and stuff in there.

X Q. 65. That was a piece cut out of the bar counter?

A. Yes, sir; I don't know whether it was wood or marble.

X Q. 66. You don't recollect whether this was marble or wood?

A. No, sir.

X Q. 74. You didn't see the lower part of the ice box?

A. I never lookad on the inside.

X Q. 75. You never went behind the bar to examine it, did you?

A. No, sir, I did not.

X Q. 81. This board that you are talking about is what is called the work board, is it?

A. Yes, sir.

X Q. 82. And is that work board part of the counter?

A. That is what they use for cleaning their glasses and so, and mixing up drinks and all such things.

X Q. 83. This work board which you refer to has a water tank, has it not?

A. Yes, sir.

X Q. 84. And this water tank was alongside of this ice box?

A, Yes, sir.

Complainant's counsel in his brief, on page 162, excuses this witness' want of knowledge by saying:

"His cross-examination, however, was chiefly directed to the upper ice box, and matters in no way referred to on his direct examination, and a

to which he professed no knowledge. He answered to his best recollection and in some respects he is in error, but that in no way changes the questions as to having seen the beer supply pipes and as to their being covered or uncovered."

Which, to say the least, is a very lame excuse to make for a witness who is called to describe the construction of this apparatus, and who finally describes an apparatus as different from Minehard's as can be imagined ; in fact Englert describes it like a modern apparatus as now built in the counter with a marble or black-walnut top, having a copper or zinc workboard along side of it. While in fact the Meinhard apparatus had nothing of the kind and was not built in the counter, but about three feet behind it.

As I said in my former brief, the only one of complainant's witnesses who had any means of knowing the construction of this apparatus was Otto Schantz, as to the remaining four witnesses that they had no occasion to examine this apparatus or familiarize themselves with its construction, and knew nothing about it except as they were told and had explained to them by Otto Schantz since the trial of the former suits. And as evidence of the character of this man Schantz, I ask your Honor to read the whole of his testimony, as he is complainant's main support, which is to be found on pages 242 to 356 of complainant's record, and for convenience I cite a portion of his examination, which will enable your Honor to judge of the charactor of the man :

By Mr. Sullivan:

X Q. 145 And who next did you work for?

A. Andy Schauers, on Front street,

X Q. 146. How long did you work for him?

A. I worked for him during the winter season that he kept the Theatre Comique.

X Q. 147. What kind of shows were held in that place?

A. Variety shows.

X Q. 148. They were a cheap class of shows, were they not?

A. That is all right; a variety show.

X Q. 149. Were they not a cheap class of variety shows?

A. I never knew what they charged for an entrance fee All I had to do was tending bar, and I had nothing to do with the rest of the business there.

X Q. 150. Didn't you know how much they charged for an admission fee there?

A. No, sir.

X Q. 151. Did you never go into the show?

A. I had the show right before me tending bar.

X Q. 152. It was held in the bar, was it?

A. Yes, sir; the bar was over the front part of the stage.

X Q. 153. And for how long did they continue that show?

A. All I worked there was during the winter season.

X Q. 154. And it continued during that winter, did it?

A. Yes, sir.

X Q. 155. What was the reason for the show being discontinued?

A. Generally went to traveling in the spring of the year.

X Q. 156. Who was the manager of the show?

A. Andy Schauers.

X Q. 157. The same who kept the saloon?

A. Yes, sir.

X Q. 158. Did the police authorities here interfere with the shows?

The complainant's counsel objected, as irrelevant and immaterial.

A. Not that I know of.

X Q. 159. Don't you know that the police authorities went down there and told him he must give up keeping that kind of shows?

Same objection.

A. I don't remember.

X Q. 160. There were some complaints made by the neighbors, were they not?

Same objection.

A. I can't remember.

X Q. 161. Did he close the saloon at the same time he discontinued the show business?

A. Yes, sir.

X Q. 162. Don't you know that there was a complaint made to the police by different parties in consequence of boys and girls visiting this variety theatre?

Same objection.

A. I don't remember whether there was any complaint made while I was there.

X Q. 163. You know it was a resort for young boys and girls, do you not?

Same objection.

A. There was no girls allowed whatever.

X Q. 164. Young boys allowed to go in there?

Same objection.

A. I never seen a boy in there; I have seen young men in there and married men.

X Q. 165. Did you see young men 14 or 15 years old there?

A. I couldn't say how old they were.

X Q. 166. Were the actors men and women or boys and girls?

A. They were married men and wives.

X Q. 167. How many women were there?

A. According to the troupe that gave the show.

X Q. 168. How many, as a general thing?

A. Sometimes there might be four and sometimes there might be only five together.

X Q. 169. And you think they were all married women?

A. I always thought they were married, I never asked them.

X Q. 170. Don't you know that the price of admission to this place was ten cents?

A. No, sir.

X Q. 171. And twenty-five cents?

A. No, sir, I couldn't say; I had nothing to do with this kind of business.

X Q. 172. Who attended to that part of the business?

A. There was another man who attended to that.

X Q. 173. Who was he?

A. I don't know his name.

X Q. 174. After you quit working for this gentleman who kept a variety show on Front street, where did you go to?

A. I went back to Martin Reed's again.

X Q. 175. How long did you work for him?

A. I worked for him during that summer of 1879 until in the fall of 1879 when I started in with Meinhard.

X Q. 176. Is Front street in this city a street chiefly occupied by saloons and second-hand clothing stores?

Complainant's counsel objected as irrelevant and immaterial.

A. I guess it is.

X Q. 308. You have taken considerable interest in this case, haven't you?

A. I don't take no interest whatever.

X Q. 309. Not interested in one way or the other?

A. No, sir.

X Q. 310. Hasn't Mr. Magin hired you to go around and look up witnesses?

A. Mr. Magin asked me whether I know of any witnesses and I told him yes.

X Q. 311. Hasn't he hired you to go around and look up witnesses?

A. No, sir.

X Q. 312. Has he paid your expenses?

A. He paid expenses what I lost during my time of labor, what I lost in employment.

X Q. 330. Before going to the Notary Public, had you and Mr. Hahn talked about the Meinhard apparatus?

A. No, sir, I only asked him what he knows.

X Q. 331. Stop right there and answer my question.

Defendants' counsel requests the witness to answer the questions only, and volunteer nothing.

X Q. 332. Who was present when you had this talk with Mr. Hahn in Chicago?

A. I talked with him alone.

X Q. 333. Did you describe this apparatus to him?

A. No, sir.

X Q. 334. Didn't you ask him if this apparatus had a rub ber hose over the beer supply pipes?

A. No. sir.

X Q. 335. Didn't you tell him this apparatus did not have a rubber hose over the supply pipes?

A. No, sir.

X Q. 336. Didn't say anything about the rubber hose?

A. No, sir.

X Q. 337. Did you say anything about the coolers?

A. I asked him what he knowed about Falls Field and he said he remembered it.

X Q. 338. Did you ask if he knew about the coolers being in this apparatus?

A. He remembered the cooler very well.

X Q. 339. Did you ask him if there were coolers in this apparatus?

A. I asked him whether he knowed that cooling apparatus and he said yes.

X Q. 340. Did you ask him how many coolers there were in the upper ice box?

A. He said he could describe that cooler very well without me telling him anything.

X Q. 341. Mr. Schantz, will you answer my question, please; if you asked Mr. Hahn how many coolers there were in this upper ice box?

A. I never asked him anything.

X Q. 342. Did you tell him how many coolers there were in the upper ice box?

A. No, sir.

X Q. 343. Did he tell you how many coolers there were in the upper ice box?

A. No, sir.

X Q. 344. Did he tell you how many faucets there were in the upper ice box?

A. No, sir.

X Q. 345. Did he tell you how many beer supply pipes there were in the upper ice box?

A. No, sir.

X Q. 346. Did he tell you how the lower ice box was made?

A. No, sir.

X Q. 347. Did he tell you how the upper ice box was made?

A. No, sir.

X Q. 348. Did he tell you who made this apparatus?

A. No, sir.

X Q. 349. Did he tell you when you saw this apparatus?

A. No.

X Q. 350. Did he tell you when he worked for Mr. Meinhard?

A. Not that I know of.

X Q. 351. Did he tell you he had a letter from Mr. Magin about this apparatus?

A No, sir

X Q. 352. Did he tell you anything about this gas jet?

A. No, sir.

X Q. 353. Did he tell you anything about dipping water out the upper ice box?.

A. No, sir.

X Q. 354. Did he tell you anything about putting ice in the upper ice box?

A. No, sir.

X Q. 355. Did he tell you anything about working for Mr Meinhard?

A. No.

X Q. 356. How long did you remain in Chicago on that occasion?

A. I arrived there about ten o'clock in the morning and I left the same evening.

X Q. 357. Did you have any other business in Chicago than to see Mr. Hahn?

A. No, sir.

X Q. 358. You went out there especially to see him, didn't you?

A. Yes, sir.

X Q. 376. Did you tell Mr. Hahn why you wanted this affidavit?

A. No, sir ; I didn't know nothing about it and only asked him what he knowed about the apparatus.

X Q. 377. Did you tell Mr. Hahn that there was a trial had between Mr. Magin and the saloon keepers here in Rochester, and that Mr. Magin was beaten?

A. No, sir.

X Q. 378. Didn't you tell him that you wanted this affidavit to get Mr. Magin a new trial?

A. No, sir.

X Q. 379. You knew that was the use to be made of this affidavit, didn't you?

A. I didn't know.

X Q. 380. Who first spoke to you about getting up these affidavits?

A. Mike Magin asked me whether I wouldn't give my affidavit what he should ask me.

X Q. 381. Where was this conversation had?

A. Mike Magin came down to the store where I worked.

X Q. 382. He came to your store?

A. Yes, sir.

X Q. 383. Did he come alone?

A. Yes, sir; he came alone.

X Q. 384. And did you accompany him to his saloon?

A. No, sir.

X Q. 385. When did you have this first talk with Mr. Magin?

A. Mr. Magin came to the store on Thursday and asked me whether my name was ——

X Q. 386. What month and year was that?

A. That was in October.

X Q. 387. Can you give the year?

A. In 1880, I believe.

X Q. 388. Did he tell you he had a lawsuit with the saloon keepers about his apparatus?

A. No, sir.

X Q. 389. Where did you have the next talk with Mr Magin?

A. I didn't have no talk any further.

X Q. 390. Is that the only talk you ever had with Mr. Magin about this apparatus?

A. Yes.

X Q. 391. Did you ever go to his saloon and talk to him about it?

A. I went to his saloon to drink a glass of beer once in a while.

X Q. 392. Didn't you talk about the Meinhard apparatus while there?

A. No, sir.

X Q. 393. Didn't you talk to him about this apparatus anywhere else?

A. No, sir.

X Q. 394. Never had but this one talk with him about this apparatus?

A. No, sir.

X Q. 395. And that was where?

A. Wile, Brickner & Wile's.

X Q. 396. Who was present during that conversation?

A. Him and I were alone.

X Q. 397. How often since that talk did you visit Magin's saloon?

A. Occasionally.

X Q. 398. How often?

A. Once or twice a week.

X Q. 399. Did you go there alone?

A. Yes, sir.

X Q. 400. Did you see Mr. Magin?

A. I went there to drink my glass of beer.

X Q. 401. And talk about this Meinhard apparatus?

A. No, sir.

X Q. 402. Didn't he describe this apparatus to you?

A. No, sir.

X Q. 403. Did you describe it to him in his saloon?

A. No, sir.

X Q. 412. Before giving that affidavit you and Mr. Magin had talked a good deal about this apparatus?

A. No, sir.

X Q. 414. Didn't he tell you that Meinhard claimed that the beer supply pipes in this apparatus had a covering on them?

A. No, sir.

X Q. 415. Didn't he tell you that that was a very important part of this litigation, to show that fact?

A. He didn't say nothing about the apparatus.

X Q. 416. Didn't he tell you how many coolers there were in it?

A. No, sir.

X Q. 417. Didn't he tell you that Mr. Meinhard claimed that Mr. Cassabeer took out these coolers in 1878?

A. No, sir.

X Q. 418. Who else besides Otto Hahn have you talked with about this apparatus?

A. I asked Raymond Stief whether he could remember anything about the cooling apparatus at Falls Field.

X Q. 419. Did I ask yon what you asked Raymond Stief?

A. You asked me whether I had any talk with anyone else about this apparatus.

X Q. 420. Yes, and that was all I did ask you; did you have a talk with anyone else?

A. I had one with Raymond Stief.

X Q. 421. And who else?

A. And George Englert.

X Q. 422. And who else?

A. George Englert and Henry Koehler.

X Q. 423. And who else?

A. That is all I remember.

X Q. 424. Did you have a talk with Mr. Englert's brother?

A. No, sir.

X Q. 425. Where did you have the talk with Mr. Koehler?

A. I met him, I believe at Mr. Magin's place.

X Q. 426. Did you ask him to come to Mr. Magin's?

A. I asked him whether he wouldn't come down, that Mr.———

X Q. 427. I didn't ask what you said; did you ask him to come to Mr. Magin's?

A. Yes, sir.

X Q. 428. And you met him there, did you?

A. Yes, sir.

X Q. 429. Did you tell him you would be there?

A. I told him I would be there.

Your Honor is asked by complainant's counsel to believe this remarkable and most improbable testimony given by a Bohemian bartender and "variety show" man in preference to the testimony of such reputable citizens as Messrs. Meinhard, Cassabeer and Schaub, whose testimony is corroborated by documentary evidence of ten years' standing.

Complainant's counsel puts the challenge in this way:

"Schantz' testimony presents the naked question whether you will believe him or Meinhard. Can there be any doubt as to which of them you will believe when Meinhard stands as a self-confessed perjurer?"

This seems a favorite phrase with complainant's counsel.

I do not deem it necessary to occupy any more of your Honor's time in my reply to complainant's brief, as in my original brief I called your Honor's attention to the testimony of all of defendant's witnesses about the Meinhard apparatus, and will not comment any further on complainant's brief except to quote a little of Mr. Bartholomay's testimony who was the last witness called by complainant in rebuttal, and who was called for the purpose of impeaching Mr. Meinhard, after Mr. Magin had informed Mr. Bartholomay that Mr. Meinhard had testified that he would not believe Mr. Bartholomay under oath, which was untrue, as Mr. Meinhard had not so testified, and Mr. Bartholomay, taking the stand under these circumstances and without having an opportunity of speaking to Mr. Meinhard, expressed his surprise that Mr. Meinhard should have so testified about him, Mr. Bartholomay testifying as follows:

By Mr. Sullivan:

X Q. 83. And he is a man (meaning Meinhard) who stands well in the community?

A. I guess so.

Q. A man who you would believe?

A. Yes, sir, I would, but not after the statement he made. I always took Mr. Meinhard for an honest man, and just as honest as I would expect a man to be.

Q. What statement have you reference to?

A. I understood he wouldn't believe me under oath.

Q. Who told you that?

A. I don't recollect; it was told me.

Q. By whom?

A. I don't know if it was Mr. Magin or somebody told me, but I couldn't recollect it yet.

Q. And you were surprised to hear that, weren't you?

A. Certainly.

Q. When did Mr. Magin tell you that?

A. Several weeks ago; I don't know if Mr. Magin told me, and I ain't certain, but I think Mr. Magin told me.

This is another specimen of the pecular tactics of the complainant

in this case; but like all the other tactics resorted to in the attempt to discredit Mr. Meinhard it proved a failure ; for in the words of Mr. Bartholomay: "Mr. Meinhard is an honest man and just as honest as I would expect a man to be."

Finally, complainant's counsel summarizes his several therories as follows:

"*First.* That the tin pipes and rubber hose were never used there."

"*Second.* That if they were there, they were put there after June, 1879."

And, lastly, that Mr. Meinhard got his ideas of the apparatus in the following manner (in the words of complainant's brief) :

"Truly, indeed, did he read the circular which Mr. Magin gave him and got himself better acquainted with the patent; so well acquainted that he either then changed his apparatus into the Gordon and now swears that he did it years before, or built a fairy structure and testified to its actual existence in 1877."

And in order to complete his theory, and to be consistent complainant's counsel should have added:

Finally. Mr. Meinhard had no apparatus at all.

I have now replied to complainant's printed brief in the order in which he presents it, except, the extracts printed in his brief taken from Mr. Selden's brief in the former suits which I do not deem necessary to reply to, as your Honor disposed of that brief in the former suits.

I stated in my original brief in this case that complainant's rebuttal testimony was based on the testimony of Schantz entirely, as the other witnesses were only repeating what Schantz had told them.

Schantz looked them up and assisted them in remembering the construction of this apparatus, and their testimony shows most conclusively that they are only trying to repeat what Schantz told them, and since the taking of the testimony and the final hearing of this case, I have read the opinion of Judge Shipman in the Grape Sugar Case on page 216, vol. 35 of the Federal Reporter, on a motion made by defendants for rehearing on the ground of newly discovered evidence, just such a motion as complainant's counsel made before your Honor in the former suits on this patent and almost under like circumstances and which was denied by your Honor, and I am forcibly reminded of the similarity of tactics resorted to in both cases, the same counsel appearing for defendants in that case that appear for complainant in this case.

Here they have secured Schantz as the man to look up this new evidence and assist the witnesses in remembering, while in the Grape Sugar case they employ a Mr Owens for a like purpose; and Judge Shipman in speaking of Mr. Owens and their newly discovered evidence, says, on page 216;

"Before the testimony for final hearing was taken, Mr. Selden one of defendant's counsel, visited Little Falls, and, as he says, 'endeavored to find the employees who were in the J. J. Gilbert starch factory, at Little Falls, N. Y.—from 1860 to 1867. I found a number of those parties.' He found Owens and Cavanaugh, who were silent, and Palmer, who was communicative enough, and whom he subpoenaed, but did not ask to testify. He had and used abundant opportunities to hear about and see all the Little Falls workmen, but it is manifest that his attempts at extracting information which would be favorable to his clients were unsucoessful. They were either ignorant and could not tell him anything, or wilful and would not tell him; and, furthermore, that their memory on the subject was confused and blurred. These witnesses were induced subsequently to remember and to talk. I distrust testimony thus obtained and given. It commands neither my confidence nor my respect."

"But whatever Owens may say is entirely untrustworthy. The

other witnesses, not including O'Brien, Palmer, and Davin who was a witness for the plaintiff and who now seeks to correct his testimony, had abundant opportunity to tell Mr. Selden what they knew if they knew anything, before the hearing, but nothing favorable could be, elicited from them until the key was applied by Owens to Morgan. Assuming that the plaintiff has acted all the way improperly, and with a just dissatisfaction at its conduct in the matter of the Duryea settlement, I have such a serious distrust of this testimony—which, I fear, has been, to a considerable extent, injected into the memory of the witnesses, though not by the defendants or any of their solicitors or counsel—that I cannot grant the petitions. The petitions are denied."

The same remarks could be applied to this case with equal force and propriety.

The reading of Judge Shipman's opinion is very instructive as it throws a flood of light on the tactics practiced by Shantz and his associates in this case.

Regretting the necessity of burdening your Honor with this additional brief, and my excuse for doing so is that I was desirous of leaving nothing undone on my part to properly present, so far as I could, the facts of this case.

I again respectfully submit that the bill of complaint in these suits, as in the former suits, should be dismissed with costs.

JOSIAH SULLIVAN,
Defendant's Solicitor,
Rochester, N. Y.

Schantz looked them up and assisted them in remembering the construction of this apparatus, and their testimony shows most conclusively that they are only trying to repeat what Schantz told them, and since the taking of the testimony and the final hearing of this case, I have read the opinion of Judge Shipman in the Grape Sugar Case on page 216, vol. 35 of the Federal Reporter, on a motion made by defendants for rehearing on the ground of newly discovered evidence, just such a motion as complainant's counsel made before your Honor in the former suits on this patent and almost under like circumstances and which was denied by your Honor, and I am forcibly reminded of the similarity of tactics resorted to in both cases, the same counsel appearing for defendants in that case that appear for complainant in this case.

Here they have secured Schantz as the man to look up this new evidence and assist the witnesses in remembering, while in the Grape Sugar case they employ a Mr Owens for a like purpose; and Judge Shipman in speaking of Mr. Owens and their newly discovered evidence, says, on page 216:

"Before the testimony for final hearing was taken, Mr. Selden one of defendant's counsel, visited Little Falls, and, as he says, 'endeavored to find the employees who were in the J. J. Gilbert starch factory, at Little Falls, N. Y.—from 1860 to 1867. I found a number of those parties.' He found Owens and Cavanaugh, who were silent, and Palmer, who was communicative enough, and whom he subpoenaed, but did not ask to testify. He had and used abundant opportunities to hear about and see all the Little Falls workmen, but it is manifest that his attempts at extracting information which would be favorable to his clients were unsucoessful. They were either ignorant and could not tell him anything, or wilful and would not tell him; and, furthermore, that their memory on the subject was confused and blurred. These witnesses were induced subsequently to remember and to talk. I distrust testimony thus obtained and given. It commands neither my confidence nor my respect."

"But whatever Owens may say is entirely untrustworthy. The

other witnesses, not including O'Brien, Palmer, and Davin who was a witness for the plaintiff and who now seeks to correct his testimony, had abundant opportunity to tell Mr. Selden what they knew if they knew anything, before the hearing, but nothing favorable could be, elicited from them until the key was applied by Owens to Morgan. Assuming that the plaintiff has acted all the way improperly, and with a just dissatisfaction at its conduct in the matter of the Duryea settlement, I have such a serious distrust of this testimony—which, I fear, has been, to a considerable extent, injected into the memory of the witnesses, though not by the defendants or any of their solicitors or counsel—that I cannot grant the petitions. The petitions are denied."

The same remarks could be applied to this case with equal force and propriety.

The reading of Judge Shipman's opinion is very instructive as it throws a flood of light on the tactics practiced by Shantz and his associates in this case.

Regretting the necessity of burdening your Honor with this additional brief, and my excuse for doing so is that I was desirous of leaving nothing undone on my part to properly present, so far as I could, the facts of this case.

I again respectfully submit that the bill of complaint in these suits, as in the former suits, should be dismissed with costs.

JOSIAH SULLIVAN,
Defendant's Solicitor,
Rochester, N. Y.

Office Supreme Court U. S.
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CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

MICHAEL MAGIN
vs.
JOHN J. KARLE. } No. 84.

MICHAEL MAGIN
vs.
JOHN H. LEHMAN. } No. 85.

Reply to "Brief and Argument for Respondent."

JOHN R. BENNETT,
Counsel for Appellant.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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Reply to "Brief and Argument for Respondent."

The appellee's "brief and argument" contains so many gross inaccuracies as to fully justify their being pointed out in this form, notwithstanding the great length at which these cases have on the part of the appellant been already presented in printed form.

The only defense presented is that of anticipation, based upon the alleged Meinhard apparatus.

The findings and conclusions of the trial court are in no sense conclusive, for otherwise the taking of an appeal where a disputed question of fact only is involved would be an idle form. In these cases we have simply the conclusion of the circuit court, and the question is, Was that conclusion justified by the facts under the well-settled rule of law that the defense of anticipation must be established "beyond a reasonable doubt"? We say it was not; and that question is here for the first time for your considera-

tion and determination presented substantially upon all the proceedings had both in these cases and in the former cases against Welker and McKay.

To determine that question involves of necessity a careful reading of the entire record as well as a comparison of the depositions taken on behalf of the respective parties, for in no other way can such a seriously disputed question of fact as is here presented be fairly determined.

A page 7 of respondent's brief it is admitted that the Meinhard apparatus as originally constructed did not contain the Gordon invention.

But it is said that "coils and rubber hose were put in by Meinhard two or three weeks thereafter and remained so." The proofs are quite to the contrary, if Meinhard is to be believed.

He testifies on his direct examination (Record, p. 303):

Q. 19. Please state what they were.

A. At first, we put some kind of coils in the bottom of the upper ice-box, so as to put ice on and keep the beer cooler, but afterwards we took those out, because they could not be well cleaned. Then we put on this rubber hose. That wasn't on before that. That is about all the alteration made on it, as I recollect.

Q. 20. Do you know who took out these coils?

A. I think Mr. Cassebeer took them out.

He further testifies:

Q. 22. How long did you use those coils in the upper ice-box?

A. Only a short while. I am not sure if we had them a couple of weeks or a couple of months.

While Cassebeer testifies on his direct examination, p. 421:

Q. 5. Did you at any time do work for them (Gilbert and Meinhard) in repairing a beer-cooling apparatus they had in their saloon?

A. Yes, sir.

Q. 6. When was that?

A. It must have been, I guess, 1876, or somewheres around there, or 1877.

Q. 7. What kind of work did you do for them?

A. Took out a few coils from the top of the box and straightened the pipes, soldered them, and straightened them, and repaired the top faucets.

On cross-examination, however, Cassebeer, having been forced to produce his books, was likewise forced to admit that he did no work for Meinhard until May, 1878, and that he could not possibly have removed the coils before September, 1878. He then attempted, but utterly failed, to fix it as on September 7th. But, unfortunately for him, he had previously testified that with the removal of the coils he had "repaired some hoppers and water-closets."

463, X Q. 688.

The bill to which he refers, containing a charge under date of September 7, 1878, he had to admit, makes no reference to any such work. He does, however, in another way, fix the date of the removal of the coils as about 1881 (p. 427):

X Q. 107. How long before Meinhard removed away from Fall's Field did you do this work?

A. It may have been a year or two before that.

X Q. 108. It was a year or two before Meinhard moved away from Fall's Field?

A. In that neighborhood.

The admitted fact is that Meinhard moved from Fall's Field in 1883. In view of Cassebeer's testimony, taken in the interval between Meinhard's direct and cross examination, Meinhard then testifies that he put rubber hose on before the coils were taken out. But for this he gives no reason other than he is forced to it to maintain his contention that he added the rubber hose to the apparatus in the summer of 1877.

Rec., p. 351 : X Q. 733. What, if anything, has changed your idea as to that?

A. I am sure Mr. Cassebeer has taken the coils out, and as it is shown that he did no work for me before 1878, so it is shown by this that the coils were taken out afterwards.

However, he has to admit, even after the production of the Cassebeer bill and books containing the accounts of 1878–'79 and subsequent years, that he has no way of fixing the date of the removal of the coils.

P. 351 : X Q. 736. So far as Mr. Cassebeer's bills and accounts are concerned, is there anything to show that this work was not done in September, October, and November, 1879?

A. I think the bills don't show nothing at all when it was.

X Q. 737. Neither the bill of 1878 nor the bill of 1879 shows when these coils were removed?

A. No, sir.

It is true that the coils "did not add to or take away from the invention." But it is equally true, in view of Meinhard's testimony, that the date when the coils were removed is the essential question, since when you shall have determined that you will have determined a date before which the rubber hose could not have been added, and until you have fixed that date definitely and beyond a reasonable doubt you cannot fix the date when that change was made, if at all.

It should be borne in mind that the date of Gordon's invention is June, 1879. So that, unless it is established that the coils were removed before that date, which it is not, then even if this Meinhard apparatus did embody Gordon's invention it was subsequent to it.

It is said that the respondents now claim "that it (rubber hose) was put on in 1877, and was on when the coils were removed from the upper ice-box in 1878." But they did not so claim until they were forced to it by the information derived

from Cassebeer's books, and then were driven to it to maintain their contention that the rubber hose was added in the summer of 1877. Indeed, there was no alternative, for if the rubber hose was not added until after the removal of the coils there was no way upon the proofs presented to establish it at a date earlier than the date of Gordon's invention; and, if Cassebeer was to be believed, that it was about two years before Meinhard moved from Fall's Field in 1883, it was nearly two years subsequent to the date of Gordon's invention.

Only by a total disregard of the evidence can it be said that "the fact is clearly established that the rubber hose was put on in 1877 and within a few weeks after putting up the apparatus in Meinhard's saloon." For no one testifies to that but Meinhard, whereas his bar-tender, Albert Stief, swears that the rubber hose was a part of the original construction of the apparatus, and that it was never changed, and Barr, Jr., swears that there was no rubber hose, but that the beer-supply pipes were encased in a metal pipe which was encased in a wooden box, while Cassebeer and Schaub are totally ignorant upon that point, for Cassebeer had nothing whatever to do with the apparatus until certainly the year 1878, and Schaub makes no pretense of having seen the apparatus until "towards the fall of 1878."

Opposite page 8 of respondents' brief is a drawing of the alleged anticipatory Meinhard apparatus, and the Court is urged to keep the arrangement therein shown in view in reading the testimony of the respondents' witnesses, as that of itself will be found to completely destroy the testimony relied upon to establish the existence of such an apparatus beyond a reasonable doubt. As therein shown, the beer-supply pipes run straight down from the bottom of the upper ice-box to and through the floor, an arrangement which obviously made it impossible to put a pail or tub on the floor underneath the upper ice-box to catch the water; yet the respondents say at page 9 of their "brief and argument,"

"The intention being to dip the water out of the upper ice-box, but the boys neglecting to do so the water ran out of the tin pipes and on the saloon floor, except so much as was caught in pails or tubs." And, strange as it may seem, Meinhard deliberately testifies that the water from the upper ice-box was caught in pails placed underneath the pipes projecting down from the bottom of the upper ice-box, and through which the beer-supply pipes ran—an impossible as well as an absurd thing, in view of the arrangement both as testified and as shown in the drawing. Meinhard testifies (p. 312):

X Q. 135. Before you had rubber hose, then, the water went out of the tin pipe onto the floor?

A. Yes, sir.

X Q. 136. And didn't you have buckets under the tin pipes to catch the water?

A. Yes, sir; but these tenders generally didn't attend to it, and the floor was wet all the time, and that was the reason I put on the hose.

Yet it is apparent to any one that that was utterly impossible, the course of the beer-supply pipes being straight down from the bottom of the upper ice-box to and through the floor beneath.

At page 18 of respondents' brief and argument it is said: "The witness Meinhard is fully corroborated by documentary evidence." Strictly speaking, there is no documentary evidence in this case, nor is there any written evidence of any character that corroborates him. Surely Cassebeer's bill and books, which are the only written evidence, do not corroborate him, for he admits that he finds nothing in them fixing the date of the removal of the coils.

P. 349: X Q. 714. Then the fact that you find on the bills rendered by Mr. Cassebeer in 1878 and 1879 "Time for fixing pipe" does not enable you to fix the time when the coils were taken out, does it?

A. No, sir, it does not.

Why are not the statements of Meinhard given on his direct examination entitled to as much credence as his statements given after the cross-examination of Cassebeer? It must always be borne in mind that it was not until it had been most conclusively established by Cassebeer's testimony that the coils could not have been removed prior to September, 1878, that it occurred to Meinhard to change his testimony originally given to the effect that the rubber hose was not added until after the removal of the coils. That, indeed, is the true sequence, for the only purpose of the coils was to cool the beer; and why were they necessary if he already had the rubber hose, forming cold-air passages, which would have cooled the beer to perfection, thus making the addition of the objectionable coils absolutely unnecessary?

Again, the drawing shown opposite page 8 of respondents' "brief and argument" shows a rubber hose connecting the lower end of each of the beer-supply pipes with their respective faucets in the kegs, and that Meinhard says was a part of his apparatus.

But that is denied by Albert Stief, who, as we have already seen, not only says that the rubber hose around the beer pipes was a part of the original construction of the apparatus as put in by Neuhardt, but that the beer-supply pipes ran direct to the faucets and were never changed.

He says (p. 282, answer to Q. 23):

> These small lead pipes ran down to the bottom of the lower ice-box, so that we could use them to tap beer. These lead pipes were fastened to the beer kegs by couplings coupled onto brass faucets that were drove into the kegs.

Likewise Schaub testifies that the beer-supply pipes ran down to and were connected directly to the keg faucets, and not as shown in the drawing (p. 481):

Q. 25. How were those beer-supply pipes fastened to the beer kegs in the cellar?

A. They were fastened on a brass coupling or soldered on it.

* * * * * * *

P. 496: X Q. 270. And the lower ends of the beer-supply pipes were drawn onto the brass couplings?

A. Yes, sir.

X Q. 271. And these brass couplings went directly in the beer kegs, did they?

A. No, sir; coupled onto the brass cock or beer faucet.

The most remarkable part about this is that he claims to have mended two of the beer-supply pipes directly above their connection to the beer kegs.

X Q. 272. You repaired the pipe in the lower ice-box, did you?

A. Yes, sir.

X Q. 273. How many pipes?

A. Two.

X Q. 274. How many beer-supply pipes were there in all?

A. Three.

X Q. 275. And two of those were broken?

A. Yes, sir.

X Q. 276. Where were they broken?

A. One right close to the coupling and the other about two feet above the beer kegs.

X Q. 277. Were they broken entirely off?

A. One was and the other was just a flat dent that I had cut through.

X Q. 278. How near the coupling was this break in the pipe?

A. Close to the coupling.

X Q. 279. So that you had to unscrew the coupling from the beer keg itself?

A. Yes, sir; from the faucet.

Now, this witness is, upon this point, in perfect accord with Albert Stief, and both of them are in direct conflict with Meinhard, as well as with the drawing in respondents' brief, made to show the apparatus as described by Meinhard. It is remarkable that if Stief and Schaub knew anything

about this apparatus they should not have known about that feature of it with which Stief had several times each day to do in tapping the beer in the cellar and Schaub had to do with the only time he ever saw the apparatus. True, Albert Stief, Meinhard's assistant bar-tender, does describe "how the supply pipes ran through the tin pipes and the rubber hose and into the lower ice-box," but his testimony is, as already pointed out, in direct conflict with that of Meinhard, for he says the rubber hose was a part of the original construction, and Meinhard says it was not. He says no changes were ever made in the apparatus, and Meinhard says there were. He says that the beer-supply pipes ran directly down and were fastened by means of a brass coupling onto the keg faucet, and Meinhard says they did not. He said, as did Meinhard, when striving to discredit the appellant's witnesses, that the saloon's bar was always closed on Sunday, but, like Meinhard, had finally to deny his previous oath, admitting that the saloon bar was always open on Sunday, as Stief says, from the morning until the evening.

Cassebeer does not fix the time of the removal of the coils, except it be about two years before Meinhard removed from Fall's Field, which would make it 1881. He tried to fix it after he was forced to produce his books, but, as we have already seen, utterly failed. When he supposed the book containing Gilbert & Meinhard's accounts was lost he said if it could be found it would contain an entry of the removal of the coils; but when, to his great surprise, it was discovered in the book which he had produced no such entry was found.

Furthermore, he had said that work was done in connection with repairs on both some "hoppers and water-closets." No such item appears, nor does anything appear in those accounts that would indicate any such work.

Barr, another of respondents' witnesses, is substantially thrown over in the respondents' brief, at page 19, the reason for which is found in the fact that upon his cross-examina-

tion he said, in describing the apparatus, that there was no rubber hose surrounding the beer-supply pipes, but that they were surrounded by a metal pipe, which metal pipe was encased in a wooden box, and this he knew because in repairing the pipes he had to break into both the wooden box and the metal pipe. (Page 406.)

X Q. 359. And the beer-supply pipes as they came out of the lower ice-box went from the wooden pipe up to the upper ice-box?

A. Went through this metal pipe and the metal pipe was insulated with this box.

* * * * * * *

X Q. 367. And you tore off part of this wooden box to see the pipes as they passed out of the lower ice-box?

A. Yes, sir; to see the covering pipe.

X Q. 368. What did you want to see the covering pipe for?

A. I had to take it apart.

X Q. 369. And that is the way you know it was a metal covering pipe?

A. Yes, sir; that is why I think it was; that is my best recollection.

X Q. 370. Did you solder up this metal pipe after you tore it apart?

A. No, sir.

X Q. 371. You did not take that trouble?

A. No, sir.

X Q. 372. Did you take the trouble to fix up the wooden pipe?

A. Yes, sir.

X Q. 373. Just simply closed that up without closing up the metal pipe?

A. I closed the metal pipe up.

X Q. 375. You closed it?

A. Yes, sir.

X Q. 376. How did you fix it?

A. With a slip joint.

X Q. 377. Had you to cut it off or cut it down lengthwise?

A. No, sir; it was put together with a slip joint.

In explanation of this witness' most remarkable testimony it is said in the respondents' brief at page 19:

"He got the construction of parts of this apparatus confounded with one of the many other apparatuses he has put in."

If this be so may it not be that his entire testimony was based upon one of the many other apparatuses he had put in in infringement of the Gordon patent? For he admits that he is an infringer to the extent of having constructed some fifty Gordon apparatuses (page 396):

X Q. 178. How many have you put in that were similar to Gordon's?
A. Oh, perhaps fifty.

* * * * * * *

X Q. 180. Can you give me an idea as to the year when you put the first one in?
A. Put in the first one in 1880, I think.
X Q. 181. And that was after you had seen the apparatus, was it not?
A. Yes, sir.

* * * * * * *

X Q. 194. Why did you contribute towards the defense of the Gordon patent?
A. Because we guaranteed some people that we would stand the cost.
X Q. 195. That is, you guaranteed some parties for whom you had put in beer drawing and cooling apparatus that you would stand between them and the Gorden patent owned by Magin?
A. Yes, sir.

Of this witness it may truly be said that he justified his testimony by his interest in the controversy.

As stated on page 19 of respondents' "brief and argument," Schaub does testify in substance that in soldering the beer-supply pipes "he had to turn up the end of the

pipes to prevent his fire from being put out by the water flowing down over the beer pipes;" but he likewise testifies that the beer-supply pipes ran directly down to the keg faucets, to which they were respectively connected by separate brass couplings, which, according to Meinhard's testimony, was not the case. Surely, then, it is strange that he should not have remembered the rubber connection between the beer-supply pipes and the keg faucets, and yet have remembered the rubber hose around the beer-supply pipes, which he had no occasion to examine and which he admits he simply saw during a casual examination of the apparatus on one occasion only. The fact is that he had to deal directly with the beer-supply pipes and had nothing whatsoever to do with any other part of the apparatus. Schaub is a confessed infringer.

At page 22 it is said:

"The complainant undertakes to overthrow this strong and positive testimony by calling four or five witnesses who worked for Meinhard in his concert hall as waiter boys, who had no occasion to examine this apparatus in his saloon, which was separated from the concert hall."

This is absolutely false. It is true that Meinhard, in an affidavit which he made, classed them all as waiter boys; but in the Welker case he gave Otto Schantz as one of his regular bar-tenders, and in his cross-examination in these cases he was forced to admit that Schantz and Raymond Stief were both bar-keepers and in a position to know and must have known of the apparatus, and that Otto Hahn, if he had had his eyes about him, could have seen the rubber hose around the beer-supply pipes (page 307):

Q. 58. How long was Otto Schantz your bartender?
A. I think about a year.

* * * * * * *

Page 365: X Q. 940. Name every one of these young men

who, to your knowledge, knew of your beer-drawing apparatus with a rubber hose around the beer-supply pipe.

A. I couldn't say how much those men knew about it; I think young Stief and perhaps two of the Stief boys.

X Q. 941. Raymond and Albert Stief?

A. Yes, sir.

X Q. 942. Did Otto Schantz know about it?

A. He ought to know something about it.

* * * * * * *

X Q. 945. Then Otto Hahn, if he had had his eyes about him, could have seen this thing?

A. Yes, sir; he could have seen it.

X Q. 946. And you do not know whether he did or did not see it?

A. I don't know.

X Q. 947. He was in a position to see it?

A. He was in a position to see anything in the lower ice-house, but he had no other business except getting beer out of the lower ice-box.

It is said that the testimony of the appellants' witnesses "is entirely of a negative character." On the contrary, it is of a most positive character, for what could be more positive than the testimony of five totally disinterested witnesses to the effect that they had seen and had to do with the Meinhard apparatus, and that it did not contain rubber hose or, indeed, any covering of any kind or character whatsoever around the beer-supply pipes. It is not only positive, in the most literal sense, but is in direct contradiction of the testimony of the appellees' witnesses.

It should be borne in mind that the appellants' witnesses do not simply testify that they did not see the rubber hose around the beer-supply pipes, but that it was not there, and they proceed to tell precisely what was there.

It is also stated at page 22: "None of these witnesses except Otto Schantz worked in the saloon;" but this is untrue, for, as we have already seen, Meinhard himself admits that Raymond Stief was his bar-tender in the saloon.

Page 374: X Q. 1085. For a short time Raymond Stief was a bar-tender in the saloon, then?
A. Yes, sir.

And Albert Stief himself testifies that his brother Raymond was the regular bar-tender from the spring to the fall of 1879. Indeed, Raymond Stief stands unimpeached and uncontradicted, with not even an attempt to reflect upon him.

Of him Meinhard testifies:

Page 340: X Q. 576. How about Raymond Stief?
A. He was a good boy.
X Q. 577. He generally kept his head about him, did he?
A. Yes, sir.

The only criticism of Otto Schantz is based upon his having been employed by the appellant to look up parties who had previously worked at Meinhard's. As the testimony shows, the appellants went to Schantz's employers and obtained permission from them to have Schantz look for some parties, for which he was paid the same *per diem* as he received in his regular employment and his expenses. Surely this is nothing to his discredit, and very far indeed from making him "utterly unworthy of credit." If, however, that is a correct standard, then Meinhard is to be judged by it, and the testimony of all the witnesses for the appellees is to the effect that Meinhard was instrumental both in their giving affidavits and in their testifying herein.

The only criticism of Otto Hahn is that on page 23, based on his statement that "each supply pipe had a separate hole in the saloon floor and lower ice-box." This is, however, only partially true. He does say that they came through separate holes in the saloon floor, but not through separate holes in the lower ice-box.

Page 102: X Q. 306. The holes in the lower ice-box, how near were they together? I mean the holes through which the beer-supply pipes ran.

A. I do not know.

X Q. 307. State as near as you can.

A. I could not tell you whether they came all out of one hole or whether they are different holes. I am not certain.

It would certainly be remarkable to discredit this witness simply because throughout the course of a long examination the only detail that he failed to recollect was as to whether the beer-supply pipes, in passing through the saloon floor, went through separate holes or one hole.

Again, if that be the test, then, judged by it, the appellants' witnesses utterly failed to establish anything.

As to George J. Englert, it is said that the circumstance which he relates in connection with his discharge in January, 1878, "is very strange, and bears upon its face unmistakable evidence of untruthfulness." I have no hesitation in saying that it bears nothing on its face of untruthfulness. On the contrary, it carries with it conviction, and, were the facts not as he stated, why did they not prove their falsity, as they could easily have done, first, by showing that he was not discharged at that time; secondly, that there was no snow storm at that time; and, third, that there was no such occurrence as the overturning of a street car, spoken of by him.

The circumstance referred to is as follows (page 115):

Q. 110. You say you stopped working steadily for Gilbert & Meinhard in January, 1878; how did you stop working steadily for them at that time?

A. I was discharged.

Q. 111. Why were you discharged?

A. Well, it was on Wednesday night, with the bowling club; they used to roll on Wednesday nights, and the beer was empty, and I run down cellar to tap some beer, and turned up the gas, and during that time I heard them all halloing upstairs, and I went up there to see what they were halloing about, and there was a big snow-storm, and we looked out, and a street car was turned over in front of the place, and I ran

down so Meinhard wouldn't see me and tapped a keg of beer and turned it on, and when I turned it on the candle went out, and the beer flew all over, and I had the pipe turned off, and Mr. Meinhard came down and told me what he would do, and would make me pay for it, and told me to get out of the place; and I went upstairs all wet; I shut the beer off first, and went up and put on my coat and hat and went home; and Friday I went back and got my pay.

Again, I say if that was not true, why was not Meinhard called to disprove it? It was a direct allegation, the truth or falsity of which could have been testified to by Meinhard. The fact that he was silent, considering the importance of this witness' testimony, speaks volumes.

As to John V. Englert, the sole criticism is:

I call your honor's attention to the fact that he stated the upper ice-box was built into the counter of the saloon.

That is true, and in that he was mistaken; but it appears that his direct testimony was confined solely to the condition of the affairs in the cellar, with which alone he had to do, and he professed no knowledge of the upper ice-box, and stated that he had no knowledge of the condition of affairs in the saloon.

Page 246: X Q. 46. You never examined the upper ice-box, did you?

A. No, sir; I had no business to.

* * * * * * *

X Q. 75. You never went behind the bar to examine it, did you?

A. No, sir; I did not.

* * * * * * *

X Q. 77. You never looked into it?

A. No, sir.

Page 261: R. D. Q. 333. This upper ice-box was in his saloon, where you had no occasion to go to attend to your business?

A. Yes, sir.

An attempt is made to explain away some most remarkable testimony of Meinhard's:

Page 369: X Q. 1015. Is Mr. Bartholomay a man you would believe?

A. I guess he could be believed.

X Q. 1016. Would you believe him or not?

A. I guess I would believe him; but not in everything. As soon as his business interests come in contact with the truth, I guess he will be just like other men.

X Q. 1017. You think, then, that Mr. Bartholomay is a man of such character that he would lie where his business interests were at stake?

A. I am sure he would do as any other business man.

X Q. 1018. And you think any other business man would lie when his business interests were at stake, do you?

A. I am sure of it.

X Q. 1019. And that is your gauge of human nature?

A. Yes, sir. I only wish to except lawyers out of this; I am not quite sure about them.

It would certainly take much more space than is employed in the respondents' "brief and argument" to explain that away. It stands there as the standard by which Meinhard must be judged. Judged by that standard, is it possible for this Court to say that anything coming from him is entitled to belief?

It is said that Mr. Bartholomay's testimony does not discredit Mr. Meinhard's. But it surely does. The careful reading of it, bearing in mind that Meinhard was a customer of Mr. Bartholomay's and that he was constantly complaining about Meinhard's "poor beer generally" (page 267, cross-question 65), will satisfy any one that no such apparatus as Meinhard claims could have been there down to the date when Bartholomay advised him to examine the Gordon apparatus in Magin's saloon. Otherwise why the "poor beer"? Bartholomay does testify about Meinhard having made changes in his apparatus, but all such changes

were subject to Bartholomay's knowledge of the Gordon apparatus in Magin's saloon, for he testifies (page 267):

X Q. 65. Mr. Meinhard spoke to you quite often about this apparatus of his, did he not?

A. I do not know; I might start a conversation about his poor beer generally.

X Q. 66. Was not an apparatus of this kind something new at that time?

A. I guess not.

X Q. 67. Had you seen Mr. Magin's apparatus at that time?

A. I don't recollect the time. I guess Mr. Magin had the first principle, as I have spoken of—a straight pipe as near the barrel as possible—a straight pipe, and I guess he was one of the first.

It was this straight pipe, like Magin had in his Gordon apparatus, that Bartholomay testified he advised Meinhard to adopt.

In this connection it is to be noted that Bartholomay was a friend of Meinhard's, a regular visitor to his saloon, he being one of his customers, and his attendance herein was only secured by virtue of a subpœna.

Page 270: R. D. Q. 124. You were subpœnaed to attend here, were you not, Mr. Bartholomay?

A. Yes, sir.

R. D. Q. 125. After seeing and having explained to you Mr. Magin's new beer-cooling and drawing apparatus you advised Mr. Meinhard to go and see it, did you not?

A. I guess I did.

R. D. Q. 126. Why did you advise Mr. Meinhard to go and see it?

A. I thought it was a practical invention.

R. D. Q. 127. You thought it was a good, practical invention and something new in its way?

A. Yes, sir.

R. D. Q. 128. And that it would be a benefit to Mr. Meinhard to have that?

A. Certainly.

The fact is that the more you read Mr. Bartholomay's testimony considering the position which he occupied the more positive becomes the conviction of the utter impossibility of Meinhard having had in his saloon an apparatus which possessed the virtues of the Gordon apparatus.

At page 30 of the respondents' brief and argument the appellees' witnesses are styled "old and respected German citizens." It may be true or it may not be true that they are "old and respected German citizens," but it is true that there is nothing in the record that justifies that statement. The presumption, considering the occupation and surroundings of these witnesses, is quite to the contrary. A fair sample of the accuracy of the respondents' brief is found in designating Albert Stief, Meinhard's assistant bar-keeper, as "an old and respected German citizen," as well as giving a like designation to Cassebeer, Barr, and Shaw, three plumbers of the most ordinary type, as their testimony clearly shows. As to Cassebeer, he is so little known that a representative man like Mr. Henry Bartholomay had scarcely heard of him. By what standard would you class Meinhard as an "old and respected German citizen?" If it can be found in the record, well and good; but as it is not there we are to judge of his standing from the testimony which he has given.

Little need be said in reply to "Defendants' reply to complainants' argument by Josiah Sullivan, defendants' counsel, before Mr. Justice Blatchford," since it is but a repetition of the "Brief and Argument by Josiah Sullivan, counsel for respondent," to which this is a reply. However, there are some few inaccuracies of such a gross character that they should not be overlooked.

On page 11 it is said, referring to the time when the coils were taken out of the upper ice-box by Cassebeer, with reference to the appellants' contention that if the coils were ever taken out it was after the year 1879, "because Mr. Cassebeer did some work for Mr. Meinhard that year."

"Counsel might with the same propriety have argued that they were taken out in any subsequent year, because Mr. Cassebeer has been doing more or less work for Mr. Meinhard every year for the last ten years." That is true, and that is precisely what we do contend, since there is as much in the accounts in the fall of 1879 and subsequent thereto and, indeed, more that would indicate the removal of the coils than is contained in the accounts prior thereto.

Furthermore, in view of Cassebeer's testimony before he was surprised by the discovery of the Gilbert and Meinhard accounts, which he thought lost, it would clearly indicate that it could not have been prior to that time.

It is said at page 12 that Cassebeer testified that if he could find the account "it would show the use of some solder in this job, as he well recollected having done so." But this is not the fact. On the contrary, he said that at that time he repaired some "hoppers and water-closets," and Meinhard says no "stuff" was used. Besides, Cassebeer says that he had no helper on that occasion, while the charge under date of September 7, 1878, shows that he had a helper with him.

Again, Meinhard testifies:

Page 526: X Q. 70. How were these coils connected with the supply pipes and the faucets?

A. They were fastened by brass couplings on each end.

So that no solder was used for that purpose, as it was only necessary to simply disconnect them and reconnect them.

Furthermore, he testifies that in taking the coils out he put back the straight pipe that was formerly there, which likewise was fastened by brass couplings on each end.

At page 21 probably appears the most deliberate and willful inaccuracy in the entire brief, and yet, in another sense, it is but an illustration of what will be found upon every page of it. It is there stated:

And again, on the same page, asks why defendants have not called to the stand Felix Guenther, Otto Schantz, and Fred. Guttacker, who at one time worked for Mr. Meinhard. The answer to this is that Otto Schantz is their man, Fred. Guenther is in Germany, and Fred. Guttacker's whereabouts is unknown.

Comment is unnecessary, as the answer is found in Mr. Meinhard's testimony at page 540:

X Q. 586. Where is Fred. Guttacker now?
A. He is here in the city.
X Q. 587. What kind of a man is he?
A. Well, he is a pretty nice man when he is not drunk.
X Q. 588. Is he not drunk most of the time?
A. No, sir; I guess not. He is very useful on some occasions; at Germania hall he is a very good hand.
X Q. 589. Can you tell me when you saw him sober last?
A. Lately I guess he is all right. He has got in a certain place now about six months, and that shows he is all right now.

Germania hall was the place where Meinhard was then living, and it would appear from his answer to X Q. 588 that Guttacker had been in the habit of working for him there. Probably the explanation of that inaccuracy will be on a par with the explanations of Meinhard and Cassebeer's testimony after the discovery of the Gilbert & Meinhard accounts.

At page 22 it is said: "the testimony being that the saloon was practically closed on Sundays." It is hard to reconcile this, not only with the facts, but with a desire for fair treatment toward this Court, for the undisputed testimony of all the witnesses save Meinhard is that the saloon was most substantially open throughout the entire day every Sunday until about 7 o'clock in the evening. Mr. Meinhard himself was finally forced to admit that the saloon was open on Sundays. It is only necessary to quote Albert Stief's testimony upon this point:

Page 283: Q. 35. What did your customers say about the beer drawn from this apparatus?

A. Well, sir, we always had a first-class trade Sunday morning in the bar-room. They always praised the beer which was drawn through this apparatus.

Page 289: Q. 131. Then, Sunday mornings all this beer that supplied your first-class trade in the bar-room was drawn through the beer-cooling apparatus?

A. Yes, sir; as long as I have been there.

Q. 132. At what time in the morning would you usually go there Sunday mornings?

A. Oh, I was always there between six and seven o'clock Sunday mornings. It depended on how late I stayed there Saturday night. I never got there after seven.

Q. 133. You were always there by seven o'clock Sunday mornings?

A. Yes, sir.

Q. 134. How long would you remain there Sundays?

A. I remained there Sundays until we closed up Sunday nights.

Q. 135. What hour did you usually close the bar-room Sunday nights?

A. Well, the bar-room was closed at the beginning of the concert Sunday evenings; there was only one door open out in the hall.

Q. 136. Then on Sundays the bar-room was kept open until the beginning of the concert and until the close?

A. Yes, sir; the beginning of the evening; during the afternoon concert it was open.

Q. 138. But all day Sunday until the Sunday night concert you were tending bar in the bar-room?

A. Yes, sir.

Q. 139. Who else attended bar in the bar-room on Sunday?

A. Sometimes Gilbert, sometimes Meinhard, and sometimes Felix. I was there quite steady right along.

Q. 143. Who attended bar most on Sundays—Meinhard or Gilbert?

A. Meinhard.

Q. 144. Was Meinhard usually every Sunday there, helping to tend to the bar-room?

A. Yes, sir; most of the time.

In this connection a short quotation from the testimony of Raymond Stief will not be out of place:

Page 28: Q 22. Was the saloon proper kept open on Sundays?
A. Until towards evening.
Q. 23. And what then was done?
A. It was closed up when the concert started in the large hall.
Q. 24. Was that the case during every Sunday during the time you worked there steadily in 1879?
A. Yes, sir.

How, in the face of such testimony, as well as Meinhard's own admission, can it honestly be said that "the saloon was practically closed on Sundays?" It is nothing more than an attempt to break the force of the wilfully false statements of Meinhard and Albert Stief in the Welker and Mackay cases, to the effect that "the bar and saloon were always closed on Sundays, and no beer was drawn from this apparatus during that time." The motive, then, was to discredit the testimony of the appellants, who, they said, had worked there on Sundays when the saloon bar was not open.

At page 23 reference is again made to Mr. Meinhard's testimony to the effect that where a man's business is at stake he could not be expected to tell the truth, and it is said that the word "truth" is not to be taken in its literal sense. Why not? Is there any other meaning for the word than its literal meaning? According to my understanding of the English language, the word "truth" has but one meaning, and it is only necessary to read Mr. Meinhard's testimony to see that he used the word in its true sense. Indeed, the word was not suggested to him, nor was it incorporated in any of the answers. It occurred in this way:

X Q. 1016. Would you believe him or not?
A. I guess I would believe him, but not in everything. As soon as his business interests come into contact with the truth, I guess he will be just like other men.

It is impossible to understand in what sense it was intended, if not in its true sense. Meinhard was not in ignorance of the English language, for that is placed beyond question by his own testimony.

Page 307: X Q. 68. Do you understand the English language?

A. I think I do pretty well; not as good as German.

X Q. 69. Did you have any trouble in your direct examination in fully and understandingly expressing yourself and giving your answers in the English language?

A. I didn't have much trouble about it; perhaps on one or two points I was not quite sure about it, but I think the answers are all right now, if you so have them.

X Q. 71. Did you have any trouble in understanding any of the questions put to you by Mr. Sullivan?

A. I did not.

Time will not permit of a more extended reply to the "brief and argument for the respondents," but it is to be hoped and believed that the foregoing will serve the purpose for which it is intended—that is, of pointing out the many gross inaccuracies therein to the extent of causing the Court, before accepting the statements contained therein, to carefully compare and verify them with the record.

The fact is that these cases have, on the part of the appellees, been tried entirely too much upon generalities, whereas the actual question presented can only be rightfully determined by a most careful and exacting examination of the record as a whole. It is not to be expected that a witness going upon the stand simply to swear to the presence of rubber hose around the beer-supply pipes could be induced to contradict himself as to that on cross-examination; but it is to the collateral facts that the Court must look to see whether the witnesses' testimony is, as a whole, convincing and entitled to credence.

As stated in my original brief, it is not enough that there is some evidence on the part of the appellees, but

there must be evidence of such character and quality as will satisfy the mind of the Court as to the prior existence of the Meinhard apparatus, embodying Gordon's improvement, beyond a reasonable doubt.

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WASHINGTON, D. C., *November* 15, 1893.